CALIFORNIA COASTAL COMMISSION

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October 26, 2006

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TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: SHERILYN SARB, ACTING SOUTH COAST DEPUTY DIRECTOR

DEBORAH LEE, ACTING DISTRICT MANAGER, SAN DIEGO AREA OFFICE

GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO AREA

OFFICE

SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR AMENDMENT NO. 1-06 (SHORT TERM VACATION RENTALS) TO THE CITY'S LOCAL COASTAL PROGRAM (For Public Hearing and Possible Action at the Meeting of November 14-17, 2006)

SYNOPSIS

SUMMARY OF AMENDMENT REQUEST

The subject LCP implementation plan amendment was submitted and filed as complete on July 20, 2006. A one-year time extension for Commission action on the proposed amendment was adopted on September 13, 2006. The last date for Commission action on this item is September 2007. The City submitted an identical LCP amendment request in June of 2005 (Encinitas LCPA No. 2-05); however, the request was withdrawn prior to hearing in February of 2006.

The City is proposing to amend its certified LCP implementation plan to prohibit short-term vacation rentals (30 days or less) within all residential zones. To accomplish that objective, the amendment revises the definition of Transient Habitation Unit to include "short-term vacation rentals". Transient Habitation Units are currently and would continue to be prohibited within all residential zones. In addition, the amendment provides for a definition of "short term vacation rental". "Bed and breakfast type" inns would still be permitted within residential zones subject to existing minor use permit provisions. In addition, the City ordinance approving these Implementation Plan revisions identifies that pre-existing short-term vacation rentals could continue to exist in residential neighborhoods as a legal non-conforming use subject to (non-LCP) regulations to address potential nuisances (Ref. Ordinance No. 2005-06 attached as Exhibit #1).

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed LCP amendment as submitted, and subsequent approval if modified. Staff is recommending denial of the LCP Amendment as submitted because the prohibition on short-term vacation rentals in all residential zones would significantly restrict lodging opportunities for coastal visitors and is in conflict with the LUP requirements for promoting access to the City's beaches. The City has documented that the demand for short-term vacation rentals is high especially in the residential zones west of Highway 101. Since the City has very few Visitor Serving Commercial (VSC) designated properties west of Highway 101, allowing short-term vacation rentals in the residential areas west of Highway 101 significantly contributes to the availability of coastal lodging near the shoreline. In addition, in approving the residential land use designations in the certified LCP Land Use Plan, the Commission would assume the residences could be rented as short-term vacation rental opportunities in residential areas, unless such use is specifically prohibited by policy or zoning. Shortterm vacation rental of blufftop homes in Encinitas has historically occurred even before certification of the LCP. The subject request to ban short-term vacation rentals in all residential zones is inconsistent with the historical practice of treating such rentals as an allowable use within residentially-designated areas, and the public access and recreation policies of the certified LUP.

In February of 2006, Commission staff recommended denial of the proposed amendment; however, prior to the hearing, the City withdrew the LCP Amendment. In July 2006, the City adopted an ordinance that provides for the regulation of short-term vacation rentals in all residential zones which includes requirements for establishing and operating a short-term vacation rental and imposes fines and penalties for violation of the regulations. This ordinance is not being proposed for inclusion into the City's certified LCP, although as explained below, Commission staff is recommending its inclusion as a suggested modification to the City's amendment request. After discussions with the City and consideration of the full range of potential scenarios to address vacation rentals in the Encinitas community, staff has determined the recommendation to deny this amendment as submitted is still appropriate, but is now proposing approval of the amendment request with suggested modifications to allow the ban on vacation rentals in all residential zones east of Highway 101, but not west of Highway 101. The prohibition of vacation rentals west of Highway 101 raises potential conflicts with the LUP policies that relate to promotion of public access and recreation. These same concerns do not generally to the residential zones east of Highway 101. In addition, with the inclusion of the City's recently enacted ordinance regulating short-term vacation rentals into the LCP as a suggested modification to the City's submittal, staff believes that the neighborhood nuisances resulting from short-term vacation rentals in the residential zones west of Highway 101 can be substantially regulated to assure the compatibility of vacation rentals in the residential neighborhoods.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 6. The findings for approval of the Implementation Plan as modified begin on Page 13.

BACKGROUND

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone. The subject LCPA will be the eighteenth amendment to the City's certified LCP.

ADDITIONAL INFORMATION

Further information on the City of Encinitas LCP Amendment No. 1-06 may be obtained from <u>Gary Cannon</u>, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

I. MOTION I: I move that the Commission reject the Implementation Program Amendment for the City of Encinitas LCP Amendment No. 1-06 as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment No. 1-06 for the City of Encinitas certified LCP and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Encinitas Land Use Plan. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

II. MOTION: I move that the Commission certify the Implementation Program

Amendment #1-06 for the City of Encinitas if it is modified as

suggested in this staff report.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

<u>RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM</u> AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment #1-06 for the *City of Encinitas* if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The <u>underlined</u> sections represent language that the City is proposing be added to the Plan and the <u>struck-out</u> sections represent language which the City is proposing be struck. The <u>double-underlined</u> sections represent language that the Commission suggests be added, and the double-strike-out sections represent language that the Commission suggests be deleted from the language as submitted.

1. Definitions, Chapter 30.04, shall be revised to read:

TRANSIENT HABITATION UNIT shall mean living quarters intended exclusively for occupancy by transient persons for a period of 30 consecutive days or less and subject to Chapter 3.12 of the Municipal Code, Transient Occupancy Tax. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin or campground space, but does not include single family or duplex units. (Ord. 97-17). shall mean living quarters used for occupancy transient persons for a period of 30 consecutive days or less. See Chapter 3.12 of the Municipal Code, Transient Occupancy Tax for

- applicable regulations. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin or campground space, or short-term vacation rental in residential units.
- 2. Chapter 30.34 Special Purpose Overlay Zones shall be revised to include the following new overlay zone:
 - 30.34.100 Short-term Vacation Rentals Overlay Zone.
 - A. Intent. The intent of the Short-term Vacation Rental Overlay Zone is to prohibit new Short-term Vacation Rentals from occurring within all residential zones east of Highway 101 and to allow them to continue as a permitted use in all residential zones west of Highway 101.
 - B. Applicability. The Short-term Vacation Rental Overlay Zone regulations shall apply to all residential zoned properties identified on the City's Zoning Map. The Short-term Vacation Rental Overlay Zone shall be divided into two (2) subareas, A and B. Residential zones west of Highway 101 shall be identified as within Subarea A. Residential zones east of Highway 101 shall be identified as within Subarea B.
 - C. Existing Short-term Vacation Rentals in residential zones east of Highway 101 (Subarea B) will become legal nonconforming uses.
 - D. Special Regulations. All Short-term Vacation Rentals west of Highway 101 (Subarea A) and any legal non-conforming Short-term Vacation Rentals east of Highway 101 (Subarea B) shall conform to the requirements of Chapter 9.38 of the Municipal Code.
 - E. The North Highway 101 Corridor Precise Plan, the Downtown Encinitas Specific Plan and the Encinitas Ranch Specific Plan shall be modified to incorporate the requirements of Section 30.34.100.
- 3. <u>Chapter 9.38 REGULATING SHORT-TERM RENTALS</u> shall be incorporated into the certified local coastal program.

(Reference Exhibit #5 for complete text of proposed regulations)

PART IV. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. <u>AMENDMENT DESCRIPTION</u>

As proposed, LCP Amendment No. 1-06 prohibits short-term vacation rentals (30 days or less) within all residential zones. Specifically, the amendment revises the existing

definition of Transient Habitation Unit to include "short term vacation rentals". Transient Habitation Units are currently prohibited within all residential zones. Currently, Transient Habitation Units are defined to include hotel and motel rooms and campgrounds. The inclusion of "short term vacation rentals" as a Transient Habitation Unit will result in the prohibition of short-term vacation rentals in all residential zones. The amendment also provides for a definition of "short term vacation rental" to generally mean the rental of any structure or portion of a structure for 30 days or less within a residential zone (see complete definition below). The ordinance approving these LCP revisions identifies that pre-existing short-term vacation rentals would be allowed to continue as a legal non-conforming use if this amendment were to be approved.

The amendment also revises the Zoning Matrix to prohibit Transient Habitation Units in the Local Commercial Zone (LC), permit them by right in the Visitor Serving Commercial Zone (VSC) and Limited Visitor Serving Commercial Zone (L-VSC) (currently allowed only with a Conditional Use Permit) and allow campgrounds within the Public/Semi-Public Zone (P/SP) with a Conditional Use Permit. The amendment also revises language within the accessory use regulations of the zoning code to clarify that Bed and Breakfast Homes are considered to be compatible with the residential land use designation and are therefore allowable in residential areas.

B. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) <u>Purpose and Intent of the Ordinance</u>. The purpose and intent of the proposed amendment is to prohibit short-term vacation rentals in all residential zones throughout the city. The City has suggested that residential homes and condominiums near the shoreline are increasingly being rented out for short term vacation use resulting in increased conflicts between residents and visitors involving late night disturbances, excessive noise, parking problems and trash. The amendment proposes to limit these conflicts by preventing any additional residential units from being used as short-term vacation rentals.

b) Major Provisions of the Ordinance.

The proposed ordinance would provide a definition for Short Term Vacation Rental:

Short Term Vacation Rental shall mean the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes 30 consecutive days or less in a residential zoning district, including single-family residences, condominiums, duplexes, townhomes and multiple-family dwellings.

In addition, the definition of "Transient Habitation Unit" is proposed be revised to include "short term vacation rental" along with its existing list that includes hotel and motel units and campgrounds. Transient Habitation Units are currently, and would continue to be, prohibited within all residential zones.

The Zoning Matrix is also proposed to be revised to prohibit Transient Habitation Units within the Local Commercial zone (designated for shopping and retail use for local residents), to allow Transient Habitation Units by right in the Visitor Serving Zone (intended for commercial activities to serve visitors) and the Limited Visitor Serving Zone (intended for primarily hotel/motel use), and to allow campgrounds within the Public/Semi Public Zone pursuant to a conditional use permit.

In addition, to clarify that Bed and Breakfast Inns are an allowable use within residential zones, existing language pertaining to Bed and Breakfast Inns is proposed to be modified within the Accessory Use provisions of the Zoning Code.

Finally, the City ordinance approving these proposed revisions identifies that pre-existing short term vacation rentals will be allowed to remain as a legal nonconforming use consistent with existing non-conforming use regulations.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The Coastal Act promotes and preserves a full range of public access opportunities along the coast, including provision of accessible and affordable visitor-serving commercial facilities which serve and support coastal visitors. These Coastal Act mandates are addressed in the City's certified LUP under several Land Use and Recreation Elements that include:

LAND USE POLICY 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses [emphasis added] such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment (Coastal Act/30250)

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses

and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. Policy 1.13 amended 5/11/95 (Reso. 95-32)

LAND USE POLICY 1.14: The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses. (Coastal Act/30250)

RECREATION POLICY 3.2: The City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas. (Coastal Act/30221/30222/30223)

RECREATION POLICY 5.1: The City recognizes Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beaches in the Encinitas area. The City will work with the State to upgrade and promote access to these State beaches, and will act to upgrade and promote access to Moonlight Beach, in order that they may receive an increased proportion of visitor uses. (Coastal Act/30214)

POLICY 5.3: The areas of South Carlsbad Beach State Park, Moonlight Beach State (future City) Park, Cardiff Beach State Park and San Elijo Beach State Park shall be designated as high intensity beach recreational use areas. (Coastal Act/30212.5/30221)

The Land Use Element also identifies the importance of the Visitor Serving Commercial zone:

The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City. Land uses within this category are an important source of sales tax revenue for the City. This designation is also important in implementing Coastal Act policies that call for the identification of hotels, resorts, and other establishments that serve visitors utilizing the City's coastal amenities. The maximum permitted floor area ratio for uses in this category is up to 1.0. (Coastal Act/30213) (LU-37a)

The concern with the proposed amendment is the potential impacts to visitors by the elimination of a significant source of overnight visitor-serving accommodations. When the City's LCP was certified in 1994, the Commission was concerned with the minimal area of the City devoted exclusively to visitor-serving uses. Only approximately 41 acres are zoned for visitor-serving use throughout the approximately 19.4 sq. miles of city area. In addition, only approximately 14.5 acres of the approximately 41 acres zoned for visitor-serving use are located west of Highway 101 close to the shoreline (Ref. Exhibit #3). Of the approximately 14.5 acres located west of Highway 101, none currently contain hotel/motels; although an approximately 130-room hotel has been approved on a 4 acre Limited-VSC site at the northwest corner of the City, west of Highway 101 (Ref. 6-92-203/Sports Shinko). The Commission found that because of the minimal area of the

City's coastal zone devoted to visitor serving zoning, the visitor commercial areas should be reserved for only the highest priority uses. There are hotels and motels within the City, however, almost all of these are located on non-visitor-serving use zones and are, therefore, not protected as a priority use.

Highway 101 is a primary coastal access route and the areas west of Highway 101 are high intensity beach use areas. The City has identified that there are currently 670 hotel rooms, 171 camping spaces and approximately 150 short-term vacation rentals citywide. In addition, west of Highway 101 or within a 5-minute walk to the beach, they identify there are approximately 468 hotel rooms, 171 camping spaces and approximately 135 short-term vacation rentals. Based on this information, existing short-term vacation rentals account for approximately 21% of available lodging near the beach or approximately 18% city –wide (See Exhibit #6, "City's Response to October 2005 Staff Report"). Therefore, existing and future use of residential structures in the nearshore area for short-term vacation rentals provides a significant supplement to the overnight visitor-serving accommodations provided in the commercial zones in the City.

As identified above, the area reserved for hotel/motel use as a priority use west of Highway 101 are limited, and no hotels currently exist in those areas. In addition, the hotel/motels not located in Visitor-Serving Commercial zones are not protected as a priority use in the currently certified LCP and, therefore, could be eliminated. The City's current request to prohibit short-term vacation rentals further restricts lodging opportunities for coastal visitors and raises serious questions with the LUP requirements for promoting access to the City's beaches. The use of short-term vacation rentals, especially in the nearshore area, is essential for the promotion of public access to the major visitor destination beaches as required by Recreation Policy 5.1 of the City's LUP.

The City has recently performed a survey that estimates approximately 2.5 million people visit Encinitas' beaches annually. In addition, the survey of beach visitors indicated that approximately 68% of the beachgoers came from outside of Encinitas and of those, 19% indicated they were staying overnight in the City (ref. City Council Staff Report dated May 12, 2004). The City staff report indicated that in response to this demand, an increasing number of property owners have begun renting their homes as short-term rentals. The City performed an Internet search for vacation rentals and determined that at least 112 residences or condominiums are currently advertised for short-term vacation rentals throughout the City. The majority of these identified residential units are located on the bluffs overlooking the ocean in the northern section of Encinitas in the community known as Leucadia. Based on that survey, the City estimates short-term vacation rental rates in the city vary from \$750.00 -\$3,750.00 per week in the low season (average \$1,564.00) to \$850.00 - \$6,000.00 per week in the high season (average \$2,414.00). Although the upper limits of these ranges are certainly not lower cost lodging, short-term rentals still offer a more affordable and desirable accommodation for many parties, especially families.

In approving the amendment, the City emphasized protection afforded to residential neighborhoods by Goal 1 of the Land Use Element of the General Plan:

Encinitas will strive to be a unique seaside community providing a balance of housing, commercial, light industrial/office development, recreation, agriculture and open space compatible with the predominant residential character of the community.

However, although part of the City's Land Use Element, this particular section of the Land Use Element is not part of the certified LUP. In addition, short-term vacation rentals have been occurring openly for the past several decades and are widely advertised as available for public rental. They have been rented not only by beachgoers but also by visitors attending the Del Mar Racetrack during the racing season. Although the City has provided some anecdotal evidence of problems with short-term vacation rentals in residential zones, it has not established that short-term rentals significantly degrade the residential character of these residential neighborhoods and has not provided a detailed log or report of the various problems. While problems may occur, it is not clear if a total ban on vacation rentals is the appropriate response particularly since the effect of the ban will be to limit or reduce a significant visitor-serving use.

The City has recently enacted Short-Term Vacation Rental regulations to address and mitigate any adverse impacts that might result from vacation rentals such as noise, disorderly conduct, traffic congestion and excessive trash (Ref. Exhibit #5). The ordinance went into effect August 2006, but is not part of the LCP or proposed with this LCP Amendment. Until the City has had time to evaluate the effectiveness of the regulations to control the problems that may exist with short-term vacation rentals, a ban on short-term vacation rentals citywide is premature. In addition, there are no policies within the LUP that would specifically prohibit residential units from being rented as short-term vacation rentals. In fact, in designating the various residential areas in the LUP, it is likely the Commission and City assumed on the basis of historical practice that the residences could be rented on a short-term basis. In addition, it was common knowledge that some blufftop homes have historically been used as short-term vacation rentals, although probably not as many as occur today. With a very limited number of visitor-serving use zones within the City and very few located near the shoreline, shortterm vacation rentals provide a significant supplement for visitor accommodations such that a prohibition on short-term rentals could have a significant adverse impact on promoting public access and visitor-serving opportunities, particularly west of Highway 101.

Another concern raised by the subject LCP Amendment is that the proposed "grandfathering" of existing vacation rentals may be limited and may not serve to protect the existing approximately 150 short-term vacation rentals. The ordinance approving the subject LCP revisions identifies that any existing short-term vacation rental will be allowed to continue subject to the non-conforming use regulations of the certified LCP. (The non-conforming use regulations are attached as Exhibit #4.) While the City ordinance allows for existing short-term vacation rentals to continue as a legal non-conforming use, the application of these non-conforming use regulations over time may reduce the number of these vacation rentals. As identified in the Section 30.76.090(B) of the City's Implementation Plan, "a nonconforming use which remains inactive for 180 consecutive days, shall be deemed to have ceased, and shall not thereafter be renewed."

Therefore, if a property owner only rents their residence during the 6-7 week period of the Del Mar Racetrack season or only rents for 3 months during the summer, they will lose the right to continue to operate as a short-term vacation rental. It is not known how many of the approximately 150 short-term vacation rentals currently operate in this manner, but since that is when demand is highest, it is likely to affect a significant number of the approximately 150 short-term vacation rentals. In addition, Section 30.76.090(C) identifies the nonconforming use would also be terminated if the use or structural nonconformity is "enlarged, extended, expanded or in any manner changed to increase its inconsistency with the regulations of this Title". Therefore, if a homeowner adds a bedroom or a second story to the residence, the right to use the residence as a short-term vacation rental may expire. Therefore, while the existing approximately 150 short-term vacation rentals may continue, it is likely that the number will be reduced, perhaps significantly, over time. While this may not have adverse impacts to public access and recreation if the eliminated short-term vacation rentals are located east of Highway, it could have a significant effect on public access and recreation if it impacts short-term vacation rentals located on the west side of Highway 101. This is because most of existing short-term rentals are located west of Highway 101 and the Encinitas beaches are much more easily accessible from locations west of Highway 101 than from east of the highway. Therefore, the effect of the City's LCP Amendment as submitted would be to reduce the amount of existing visitor-serving uses within the City, particularly those west of Highway 101 that are in close proximity to the shoreline.

In approving other Local Coastal Programs and Amendments in other communities, the Commission has found short-term vacation rentals in residential zones can be a valuable and necessary visitor-serving asset. In each case, the Commission must evaluate the availability of existing hotel/motel accommodations in the near shore area, the historic pattern of short-term vacation rentals in the area, the specific visitor serving uses available, the services available to serve the proposed vacation rental use, and the impacts of such vacation rental use in the residential community. Recently, the Commission approved an LCP amendment to allow short-term vacation rentals in the Residential Single Family (RS) and the Mixed Residential Use (R2) zones within the Shelter Cove community in Humboldt County affecting approximately 2,300 lots (Ref. Humboldt County LCPA No. 1-98-C). In balancing the need to support public access by increasing the availability of visitor-serving accommodations with the need to protect the residential community, the Commission approved suggested modifications to the Humboldt County LCP Amendment request that required specific regulations for vacation rentals in terms of managing the number of occupants, parking and other related impacts, so as to not unduly impact local residents. In addition, a suggested modification was added that required property owners desiring to provide a vacation rental to demonstrate proof of adequate sewer and water services to accommodate the increased intensity of use associated with the proposed vacation rental.

In the City of Imperial Beach, the Commission rejected an LCP amendment to ban vacation rentals in all residential zones in 2002 finding that the proposal was excessively restrictive and discouraging toward tourist related uses and visitor accommodations (Ref. City of Imperial Beach LCPA No. 1-02A). In 2004, the Commission approved an amendment to the City of Imperial Beach's LCP to add short-term rentals as a permitted

use in the Commercial and Mixed-Use zones adjacent to the shoreline and to phase out any short-term vacation rentals in the residential zone (R-1500) along the shoreline (Ref. City of Imperial Beach LCPA No. 1-03). These Commercial and Mixed Use zones adjacent to the shoreline contained existing residential units. In addition, the phase out of vacation rentals in the residential zone adjacent to the shoreline was found to have an insignificant affect on the supply of short-term vacation rentals (9 affected residences). Unlike the first LCP amendment, the request did not include an explicit prohibition of short-term vacation rentals in all residential zones throughout the City. In contrast, the City of Encinitas request involves a prohibition of short-term vacation rental in all residential zones. In addition, unlike Imperial Beach, most of the land use designations along the shoreline in Encinitas are residential, and the prohibition of short-term vacation rentals would have a significant impact on the supply of visitor serving accommodations in nearshore areas.

In summary, the proposed LCP Amendment raises serious concerns relating to the supply of current and future visitor-serving uses within the City, particularly those near the shoreline. As proposed, the prohibition on short-term vacation rentals in all residential zones and the application of nonconforming use regulations for those that will be allowed to continue as a legal nonconforming use will have a significant adverse impact on visitors, particularly for the residential zones west of Highway 101, and would set an adverse precedent for balancing the needs of residents and visitors. Therefore, as proposed, the amendment cannot be found in conformance with and adequate to carry out, the certified land use plan, and must be denied.

PART V. FINDINGS FOR APPROVAL, AS MODIFIED, OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT #1-06

A. Summary of Suggested Modifications.

As recommended for approval, a new special purpose overlay zone titled "Short-term Vacation Overlay Zone" would be established. This overlay zone would apply city-wide for all residential zones and consists of two (2) subareas A and B. Subarea A applies to all residential zones west of Highway 101 and Subarea B applies to all residential zones east of Highway 101. Currently short-term vacation rentals are allowed in all residential zones throughout the City. The purpose of the new overlay zone is to prohibit short-term vacation rentals in all residential zones east of Highway 101 (Subarea B) and allow them to continue as a permitted use in all residential zones west of Highway 101. In addition, all existing short-term vacation rentals east of Highway 101 (Subarea B) would be allowed to continue as a legal non-conforming use. In addition, a suggested modification is included that the reference to "short-term vacation rental unit in residential units" be eliminated from inclusion in the City's proposed definition of "Transient Habitation Unit' since inclusion of "short-term vacation rental unit in residential units" in that definition would prohibit short-term vacation rentals throughout the City. All other City proposed changes to the IP are recommended for approval. Finally, as revised by proposed modification #3, the proposed amendment will be revised to include the recently City approved Short-term Rental Regulations (Chapter 9.38 of the Municipal

Code; attached as Exhibit #5) that establishes procedures for maintaining or establishing a short-term vacation rental, affords a mechanism for neighbors to report problems and sets up a series of fines and penalties for violation of the regulations.

B. <u>Adequacy of the Modified Ordinance to Implement the Certified LUP Segments.</u>

The Coastal Act promotes and preserves a full range of public access opportunities along the coast, including provision of accessible and affordable visitor-serving commercial facilities which serve and support coastal visitors. These Coastal Act mandates are addressed in the City's certified LUP under several Land Use and Recreation Elements that include:

LAND USE POLICY 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses [emphasis added] such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment (Coastal Act/30250)

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. Policy 1.13 amended 5/11/95 (Reso. 95-32)

LAND USE POLICY 1.14: The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses. (Coastal Act/30250)

RECREATION POLICY 3.2: The City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas. (Coastal Act/30221/30222/30223)

RECREATION POLICY 5.1: The City recognizes Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beaches in the Encinitas area. The City will work with the State to upgrade and promote access to these State beaches, and will act to upgrade and promote access to Moonlight Beach, in order that they may receive an increased proportion of visitor uses. (Coastal Act/30214)

POLICY 5.3: The areas of South Carlsbad Beach State Park, Moonlight Beach State (future City) Park, Cardiff Beach State Park and San Elijo Beach State Park shall be designated as high intensity beach recreational use areas. (Coastal Act/30212.5/30221)

The Land Use Element also identifies the importance of the Visitor Serving Commercial zone:

The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City. Land uses within this category are an important source of sales tax revenue for the City. This designation is also important in implementing Coastal Act policies that call for the identification of hotels, resorts, and other establishments that serve visitors utilizing the City's coastal amenities. The maximum permitted floor area ratio for uses in this category is up to 1.0. (Coastal Act/30213) (LU-37a)

As discussed Section IV above, a complete ban on short-term vacation rentals in all residential zones throughout the City would have significant adverse impacts on visitors, particularly for the residential zones west of Highway 101 and would conflict with the LUP requirements for promoting access to the City's beaches. The City estimates that there are approximately 150 existing short-term vacation rentals city-wide with the majority of these located on the bluffs overlooking the ocean in the northern section of Encinitas in the community known as Leucadia. Commission staff has also surveyed the internet for advertised short-term vacation rentals within the City of Encinitas and has found that most, if not all, lie west of Highway 101. The City has also identified that vacation rentals account for approximately 21% of all available lodging close to the shoreline.

Recreation Policy 5.1 of the City's LUP requires that the City promote access to its beaches in order that they may receive an increased proportion of visitor use. Since short-term vacation rentals currently provide a significant proportion of visitor accommodations along and near the shoreline, any reduction or prohibition of those accommodations would be inconsistent with the requirements of Recreation Policy 5.1 to promote visitor use. Therefore, staff is recommending that the City's IP amendment be modified to protect existing and future short-term vacation rentals in all residential zones west of Highway 101 where most (90% or more) of these short-term vacation rentals are located. A prohibition of short-term vacation rentals in all residential zones east of Highway 101 does not raise the same public access and recreation concerns, since it is the

proximity to the shoreline and views of the ocean that creates the demand for short-term rental of residential structures. Visitors using short-term vacation rentals west of Highway 101 can easily walk back and forth to the beach throughout the day, while visitors east of Highway 101 cannot. Access from the east side of Highway 101 to the beach is also limited because of the railroad tracks that parallel the east side Highway 101 throughout the City. There are only four east/west access streets to the beach east of Highway 101 across the railroad tracks. Therefore, walking back and forth to the beach from a rental unit east of Highway 101 is not as practical. Since vacation rentals of residences east of Highway 101 would likely result in the use of an automobile or public transit to get to the shoreline via these four streets, it is far more likely that visitors would use lower cost hotel/motels in the region since the ease of access to the shoreline and visitor experience would generally be identical. Therefore, a ban on short-term vacation rentals in residential zones east of Highway 101 does raise a concern with the requirements of Recreation Policy 5.1 of the City's LUP.

Although the use of short-term vacation rental in the nearshore area west of Highway 101 is essential for the promotion of public access to the City's major visitor destination beaches, it is recognized that short-term vacation rentals may result in conflicts, such as has been identified by the City, if the use is not regulated. Therefore, regulations to police and monitor the use are appropriate, essential and preferable to an outright ban of short-term vacation rentals west of Highway 101. Recently the City enacted an ordinance (Section 9.38) which seeks to regulate the operation of short-term vacation rentals. Staff is recommending that this ordinance be incorporated into the LCP. The ordinance generally establishes a procedure for applying for a short-term vacation rental, limits the occupancy of the units, limits the number of automobiles, requires an available 24-hour telephone number to register complaints about any nuisance and sets up fines and penalties for violation of the regulations. Ultimately, if violations are not resolved or are excessive, the use of the residence as a short-term vacation rental can be eliminated. The City's Short-term Rental Regulations should be incorporated into the LCP to ensure that future changes to the Regulations that might have the effect of discouraging or prohibiting short-term rentals are subject to Coastal Commission review.

In conclusion, the proposed amendment strikes a balance between the protection of residential areas and the accommodation of visitor-serving facilities, consistent with the policies of the certified LUP. Vacation rentals will continue to be allowed in residential zones west of Highway 101 near the shoreline, but now will be regulated to assure any nuisance conflict that occurs as result of the short-term rental of the residence(s) can be quickly and effectively controlled. Thus, as modified, the amendment conforms with, and is adequate to carry out, the certified land use plan.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL OUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead,

the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in approving an IP submittal, or as in this case, an IP amendment submittal, to find that the approval of the proposed IP, or IP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 135440(f), and 13555(b).

In this case, the City of Encinitas has prepared an IP Amendment but the Commission has found that several significant impacts associated with the proposed IP Amendment would occur and has proposed suggested modifications to make the amendment request consistent with the certified Land Use Plan. As a result of these modifications, the Commission finds that the proposed amendment does conform to CEQA provisions. Therefore, the Commission finds that approval of the IP amendment will not result in any significant unmitigated adverse environmental impacts.

(G:\San Diego\Reports\LCPs\Encinitas\ENC 1-06 LCPA Vac rentals Stfrpt.doc)

RESOLUTION 2006-27

JUL 2 0 2006

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA AUTHORIZING STAFF TO RESUBMIT TO THE CALIFORNIA COASTAL COMMISSION ORDINANCE 2005-06 REGARDING THE PROHIBITION OF SHORT-TERM VACATION RENTALS

BE IT RESOLVED that the City Council of the City of Encinitas, California, hereby authorizes staff to resubmit Ordinance No. 2005-06 to the California Coastal Commission as an amendment to the City's Local Coastal Program related to the prohibition of short-term rentals in residential zones.

PASSED AND ADOPTED this 28th day of June, 2006, by the following vote, to wit:

AYES:

Dalager, Guerin, Houlihan.

NAYS:

Stocks.

ABSENT:

Bond.

ABSTAIN:

None.

City of Encinta

Deborah Cervone

City Clerk

EXHIBIT NO. 1

APPLICATION NO. **Encinitas LCPA**

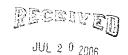
#1-06

Short-term Rentals

City Resolution

Page 1 of 7

California Coastal Commi



ORDINANCE NO. 2005-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINTAS, AND CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTERS 30.04 AND 30.09, AND SECTION 30.48.040Z REGARDING SHORT-TERM VACATION RENTALS, BED AND BREAKFAST USES

ZCA/LCPA Case #04-280

WHEREAS, the City Council has determined that short-term vacation rentals in residential zones has caused land use conflicts that are normally associated with residential neighborhoods;

WHEREAS, such land use conflicts have included excessive noise, parking congestion with the neighborhood, traffic congestion, excessive trash, late night disturbances, and overcrowding, impacting established residential neighborhoods;

WHEREAS, in order to address this issue, the Council has determined to prohibit short-term vacation rentals within residential neighborhoods;

WHEREAS, the Council has determined that the adopted Zoning Code and Local Coastal Program amendments are consistent with the General Plan and Local Coastal Plan. The General Plan, LCP and Zoning Map establish various land use categories to ensure compatibility and to reduce conflicts between uses. The residential land use categories are established to protect existing neighborhoods from conflicts with more intensive uses. Short-term vacation rentals have, in some cases, caused conflicts with residential uses. The prohibition of short-term vacation rentals reinforces the purpose of the residential zones and helps to preserve and strengthen their established character.

WHEREAS, Goal 1 of the Land Use Element states that the City is a "unique seaside community providing a balance of housing, commercial light industrial/office development, recreation, agriculture and open space compatible with the predominant residential character of the community." The General Plan considers the predominant residential character of the community important.

WHEREAS, Policy 1.13 of the Land Use Element requires visitor-serving commercial land uses to "be located where it will not intrude into existing residential communities." The policy further clarifies that bed and breakfast facilities may be compatible in residential areas.

WHEREAS, short-term vacation rentals are considered to be a visitor-serving land use. Such uses have, in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor serving commercial uses to "intrude into existing residential communities." (Goal 1 and Policy 1.13, Land Use Element)

1

WHEREAS, as such, the City Council determines that the prohibition of the short-term vacation rentals would not have an impact on the visitor-serving uses within the City, since the City has designated areas for visitor-serving commercial uses, which has the specific intent of providing services to visitors of the community. In addition, ample visitor serving uses are allowed within a variety of commercial zones within the City. Also, the existing residential uses that are currently used as short-term vacation rentals will become legal nonconforming uses and may continue to operate as a vacation rental subject to certain operational controls to address any potential nuisances.

NOW, THEREFORE, the City Council of the City of Encinitas, California, does ordain as follows:

SECTION 1: That Chapter 30.04, Definitions, is amended as follows:

SEE EXHIBIT A

SECTION 2: That Chapter 30.09, Use Matrix, is amended as follows:

SEE EXHIBIT B

SECTION 3: That Section 30.48.040Z, Bed and Breakfast accessory use, is amended as follows:

SEE EXHIBIT C

SECTION 4: The City Council, in their independent judgement, finds that the adoption of the Zoning Code and Local Coastal Program Amendments will be exempt from Environmental Review pursuant to General Rule 15061 (b) (3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development.

SECTION 5: This ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas

SECTION 6: This Ordinance was introduced on April 13, 2005.

PASSED AND ADOPTED on the 11th day of May, 2005, by the following vote to wit:

Encinitas LCPA 1-06 Page 21

AYES:

Dalager, Bond, Guerin, Houlihan.

NAYS:

Stocks.

ABSTAIN:

None.

ABSENT:

None.

Dan Dalager

Mayor of the City of Encinitas, California

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance No 2005-06, which has been published pursuant to law.

Deborah Cervone, City Clerk

EXHIBIT A

ORDINANCE NO. 2005-06

Definitions, Chapter 30.04:
BED AND BREAKFAST HOME shall mean a single family dwelling which is operated to provide lodging for pay, including overnight sleeping accommodations and breakfast, for one (1) or more guests for 30 consecutive days or less.
HOTEL shall mean a structure or portion thereof or groups of attached guest rooms or suites occupied on a transient basis for compensation.
MOTEL shall mean the same as "hotel".
SHORT TERM VACATION RENTAL shall mean the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes 30 consecutive days or less in a residential zoning district, including single-family residences, condominiums, duplexes, townhomes and multiple-family dwellings.
TRANSIENT HABITATION UNIT shall mean living quarters used for occupancy by transient persons for a period of 30 consecutive days or less. See Chapter 3.12 of the Municipal Code, Transient Occupancy Tax for applicable regulations. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin, campground space, or short-term vacation rental unit in residential units.

ORDINANCE NO. 2005-06 EXHIBIT B

Use Matrix, Chapter 30.09

Use				Zonin	Zoning uses										
	RR	RR RS-11 R-11 R-20 MHP OP LC GC VSC LI B	R-11	R-20	MHP	ОР	IC	29	VSC	<u> </u>	ВР	P/SP	BP P/SP ER/OS L-LC L-VSC	FLC	L-VSC
	RR-1	R-3	R-15	R-25											_
	RR-2	R-5													
		8-8 8-1													
Camps (Ord 95-04)	×	×	×	×	×	×	× × × ×	_×	×	_×	×	ပ	<u>ီ</u>	×	×
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Hotel	×	×	×	×	×	×	×	C	а	×	×	×	×	×	-
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Motel	×	×	×	×	×	×	×	C	ے	×	×	<	v.	<	-
Transient Habitation								_ (-	***	>	>	
(Ord. 91-03)	×	X X X X X	×	×	×	×	×	اد		×	V		4		

* Not permitted within coastal zone ecological resource areas. ** Applies to camps only.

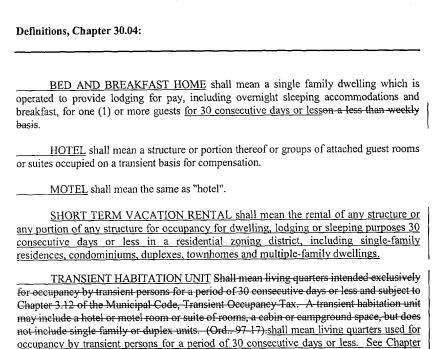
P = Permitted by Right
C = Conditional Use permit Required (Major)
Cm = Conditional Use Permit Required (Minor)
X = Prohibited

ORDINANCE NO. 2005-06 EXHIBIT C

Accessory Uses, Chapter 30.48 Section 48.040Z Bed and Breakfast Home

- Z. Bed and Breakfast Home. A bed and breakfast home is a permitted accessory use upon issuance of a minor use permit provided the following conditions are complied with:
 - Located in a residential zone or in a designated Historic building, or conducted within a structure which was constructed prior to 1936.
 - 2.* A maximum of five bedrooms shall be made available for rent.
 - 3. With the exception of a designated historic building or a structure constructed prior to 1936, no bed and breakfast home shall be located on a lot closer than 200 feet from any other lot containing a bed and breakfast home. The 200 foot distance shall be measured in a straight line connecting the closest points on the lot lines and without regard for intervening structures.
 - 4. The owner or lessee of the property shall operate the facility and reside in the home.
 - 5.* One off-street parking space for each room rented and each employee shall be provided in addition to the parking required for single-family occupancy.
 - Service shall be limited to the rental of rooms and the provision of breakfast for overnight guests. No food preparation or cooking by guests shall be conducted within any bedroom made available for rent.
 - Signs shall be limited to one on-premise sign not to exceed two square feet.
 - *Note: Standard may be modified if the home is a designated historic building or conducted within a structure, which was constructed prior to 1936.

ORDINANCE NO. 2005-06 <u>EXHIBIT A</u>



3.12 of the Municipal Code, Transient Occupancy Tax for applicable regulations. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin,

campground space, or short-term vacation rental in residential units.

EXHIBIT NO. 2

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
Strike-out/Underlined
Version of City
Proposed Ordinance
Page 1 of 3
California Coastal Commission

ORDINANCE NO. 2005-06 EXHIBIT B

Use Matrix, Chapter 30.09

Use				Zonin	g uses				i						
	RR RS-11 R-15 MHP OP LC GC VSC LI BP P/SP ER/OS L-LC L-VSC RR-1 R-3 R-15 R-25 MHP OP LC GC VSC LI BP P/SP ER/OS L-LC L-VSC	RS-11 R-3	R-11 R-15	R-20 R-25	MHP	OP	rc	၁ဗ	NSC	ונו	BP	P/SP	ER/OS	77-7	L-VSC
	RR-2	R-5 R-8													
Camps (Ord. 95-04)	×	×	×	×	X	x	×	x	X	×	x	ပ	ڻ	×	×
Hatel	×	×	×	×	X	×	×	د	<u>a</u>	×	×	×	×	×	P
Matel	×	×	×	×	×	. ×	×	د	ď	×	×	×	×	×	a.
Transient Habitation (Ord. 91-03)	×	×	×	×	×	×	ex ex	X CX C PC X X C** X	P.C.	x	x	C**	×	×	Cb

P = Permitted by Right
C = Conditional Use permit Required (Major)
Cm = Conditional Use Permit Required (Minor)
X = Prohibited

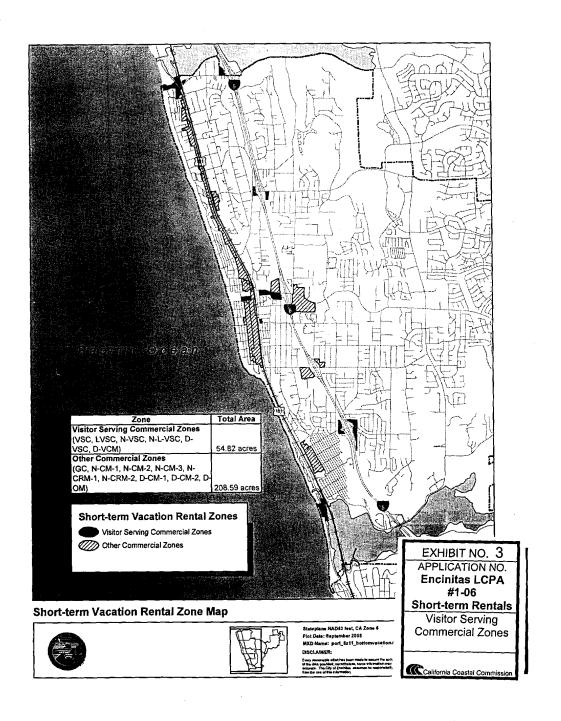
* Not permitted within coastal zone ecological resource areas. ** Applies to camps only.

psm/pbd/f/code amendmen/short-term rentals/ord amending lopa 06/08/05/93/39/05

ORDINANCE NO. 2005-06 EXHIBIT C

Accessory Uses, Chapter 30.48 Section 30.48.040Z Bed and Breakfast Home

- Z. Bed and Breakfast Home. A bed and breakfast home is a permitted accessory use upon issuance of a minor use permit provided the following conditions are complied with:
 - 1. Located in a residential zone or in a designated Historic building, or conducted within a structure which was constructed prior to 1936.
 - 2.* A maximum of five bedrooms shall be made available for rent.—A bed and breakfast home having more than five bedrooms available for rent may be approved if the home is designated a Historic Landmark in accordance with the Historic Landmark Designation.
 - 3. With the exception of a designated historic building or a structure constructed prior to 1936, Nno bed and breakfast home shall be located on a lot closer than 200 feet from any other lot containing a bed and breakfast home. The 200 foot distance shall be measured in a straight line connecting the closest points on the lot lines and without regard for intervening structures.
 - 4. The owner or lessee of the property shall operate the facility and reside in the home.
 - 5.* One off-street parking space for each room rented and each | employee shall be provided in addition to the parking required for single-family occupancy.
 - 6. Service shall be limited to the rental of rooms and the provision of breakfast for overnight guests. No food preparation or cooking by guests shall be conducted within any bedroom made available for rent.
 - 7. Signs shall be limited to one on-premise sign not to exceed two square feet.
 - *Note: Standard may be modified if the home is a designated historic building or conducted within a structure, which was constructed prior to 1936.



05-90

30.76.010

CHAPTER 30.76

NONCONFORMITIES

30.76.010 Purpose.

- A. This Chapter is enacted to accomplish the regulation and eventual elimination of nonconforming uses and structural nonconformities with special regulations for nonconforming dwelling units.
 - B. This Chapter is not intended to restrict the City's ability to eliminate a public nuisance.
- C. This Chapter is not intended to limit the City's ability to condemn a use or structure and pay to the owner thereof reasonable compensation.
- D. Nothing in the Chapter shall preclude the City from declaring a building, structure, improvement or use to constitute a danger to the safety, health or welfare of the public and to take lawful action to remedy that danger.
- E. This Chapter does not preclude the City from requiring an owner of a structure which has been constructed, expanded or altered either without a required building permit or contrary to the provisions of an issued building permit to modify or remove such structure or to obtain a required building inspection and final approval.
 - 30.76.020 Nonconforming Use. A "nonconforming use" is a use that:
- A. Is not within the scope, either expressly or implicitly, of the zoning restrictions set forth in this Title that announce the purpose, intent, permissible uses, accessory uses and prohibited uses for the zone in which the particular use is located;
- B. Did comply with the zoning restrictions contained in the zoning ordinance in effect at the time the use was created and was lawfully created; and
 - C. Has not been terminated in accordance with the provisions of this Chapter.

EXHIBIT NO. 4

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
Existing Certified
LCP Non-Conforming
Use Regulations
Page 1 of 5

California Coastal Commission

05-90

30.76.030

- 30.76.030 Structural Nonconformity. "Structural nonconformity" is a physical aspect of a building, structure or improvement that:
- A. Does not conform to the development standards announced in this Title to include, without limitations, height, set-backs, lot area, parking, type of building, or coverage of lot by structure:
- B. Did comply with the development standards contained in the zoning ordinance in effect at the time the building, structure or improvement was constructed or structurally altered and was lawfully constructed; and
 - C. Has not been terminated in accordance with the provisions of this Chapter.
- 30.76.040 Establishment of a Nonconformity. In order to legally continue a use or structural aspect of a building, structure or improvement that is not consistent with the zoning regulations of this Title, the person asserting a claim of nonconforming use or structural nonconformity has the burden of proof to establish that the use or structural feature qualifies in accordance with the provisions of this Chapter.

30.76.050 Limit on Utilizing Nonconformity, General.

- A. It is unlawful for any person to enlarge, extend, expand or in any other manner change a nonconforming use or a structural nonconformity so as to increase its inconsistency with the zoning regulations of this Chapter.
- B. A nonconforming use may be replaced with the same or a similar use so long as the subsequent use does not enlarge, extend, expand or in any other manner increase the inconsistency with the regulations of this Title.
- C. Repairs and maintenance may be performed on structural nonconformities so long as the nonconformity is not enlarged, relocated or increased in intensity, unless permitted by this Chapter.
- 30.76.070 Remodeling or Reconstruction of Nonresidential Building with Structural Nonconformity.
- A. Any application for a project for the remodeling/additions of a building with one or more structural nonconformities at an estimated cost of more than 50 percent of the building's value, as established by the Planning and Building Director at the time of application, shall be approved only if the project complies with all of the regulations of this Code. (Ord. 2003-08).

05-90 30.76.070

B. Any project for a building with one or more structural nonconformities that is damaged to less than 75 percent of its valuation or that is the subject of a remodeling and addition project less than 50% of the building's value as determined by the Planning and Building Director at the time of the application, may be approved with the continuation of the nonconformities so long as the nonconformities are not enlarged, extended or expanded. However, the owner must covenant to complete the project within 18 months of the issuance of the required permits, or, in the alternative, to abandon the structural nonconformities and comply with the regulations contained in this Code. This shall not result in review of any existing use permits for the subject parcel unless the use is to be altered or expanded. (Ord. 2003-08).

- C. In applying this section to remodeling and additions, the City shall include all remodeling and additions accomplished in the twelve (12) months preceding the application in determining whether "more than fifty percent (50%) of the building's value" is involved in the present application.
- 30.76.080 Nonconforming Lots. A single building may be constructed on a lot of less area than required by this Title so long as the lot is a legal lot of record, was created prior to the imposition of the present zoning regulation which makes it nonconforming, has sufficient area to provide a building site, has not merged, and is not mergable.

30.76.090 Termination of Nonconformity, General.

- A. If a nonconforming use is changed to a use that conforms to or is more consistent with the regulations of this Title, then any entitlement to maintain the nonconforming use is modified in that same degree.
- B. Unless otherwise provided in this Chapter, a nonconforming use which remains inactive for 180 consecutive days, shall be deemed to have ceased, and shall not thereafter be renewed.
- C. If a nonconforming use or structural nonconformity is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this Title, then, in addition to any other consequences imposed by this Code, any entitlement to thereafter maintain the nonconformity is terminated.

07-94 30.76.100

30.76.100 Nonconforming Rental Dwelling Use. A nonconforming rental dwelling use is inactive if the rental dwelling area is not occupied and is not subject to being occupied in accordance with an existing lease or rental agreement:

- A. Entered into for a fair market rent; and
- B. Entered into by the tenant with the intention of occupying the unit.

30.76.110 Nonconforming Guest Dwelling Use.

- A. A nonconforming guest dwelling use is inactive if the unit is not occupied by a guest during any 730 day period.
- B. A nonconforming guest dwelling use is terminated if the unit is the subject of a rental or lease agreement entered into by the tenant with the intention of occupying the unit.

30.76.120 Remodeling or Reconstruction of Residential Buildings with Structural/Use Nonconformity.

A. Any project for a building with one or more structural or use nonconformities that is damaged up to 100% (by accident or voluntary) of its valuation can be reconstructed for the continuation of the nonconformities provided such nonconformities are not increased in density or intensity. Nonconforming residential buildings may be reconstructed, added to, or structurally altered so long as neither the number of dwelling units for each complex nor the intensity of the nonconformity is increased, and the number and size of existing parking spaces is not reduced. An addition to, or the conversion of a portion of, a nonconforming single family residential building in order to create an accessory unit pursuant to Section 30.48.040W shall not be considered an intensification for purposes of this Section. (Ord. 94-11)

An increase to the "intensity" of a nonconforming structure/ use would refer to:

- expanding the structural nonconformity, e.g., not meeting development standards;
- 2. any additions to a nonconforming use (e.g., an existing duplex in a single family zone) that would result in an increase to the number of bedrooms, as defined by the UBC (Uniform Building Code) or be greater than 50% of the gross floor area of the nonconforming dwelling. Additions to nonconforming uses shall be subject to the following provisions:

30.76.120

07-94

- a. The primary unit shall not be considered a nonconforming use and not subject to these provisions and shall be permitted to expand subject to the development standards of the zone in which the use is located in, however, lot coverage and FAR (Floor Area Ratio) requirements shall apply to all of the structures located on the parcel. The primary unit shall be limited to the unit that is greater in gross square footage or when the units are of equal size the property owner shall designate the primary unit.
- b. Those nonconforming residential units other than the primary unit that expand shall be restricted to low and very low income households. A covenant shall be recorded against the parcel to guarantee the nonconforming unit to be rented at low and very low income levels.
- c. An addition for the enclosing of parking shall not be considered an increase in intensity of the nonconforming us.
- B. For multifamily dwellings of 5 or more units, the building profile may be modified if the resulting profile does not result in a structure contrary to this section and the following findings are made by the authorized agency: (Ord. 88-02)
 - 1. There are no additional negative impacts to the character of the neighborhood beyond the assumed negative impacts of the nonconformity; and
 - 2. The resulting design will enhance the neighborhood and will not significantly increase the economic life of the nonconformity thereby expanding the nonconformity beyond that which would occur through normal maintenance practices; and

3. Either:

- a. the building profile modification is necessary for protection of health and safety; or
- b. a significant public benefit will accrue from the increase in building profile; public benefit shall include, but not be limited to:
 - Additional significant public improvements will be made to the adjacent infrastructure;
 - Drainage in the area will be significantly enhanced as a result of the change.

Chapter 9.38 SHORT-TERM RENTALS

Sections: 9.38.010 9.38.020	Purpose—Findings and Determinations Short-Term Rental – Defined
9.38.030	Short-Term Rental - Permit Required/Penalty
9.38.040	Short-Term Rental Permit Requirements
9.38.050	Violations and Penalties
9.38.060	Imposition of Penalties/Suspension - Procedure
9.38.070	Fees and Permits - Not Exclusive
9.38.080	Private Actions to Enforce

9.38.010 Purpose—Findings and Determinations

The City Council finds and determines that the City has received numerous complaints related to Short-Term Rentals including, but not limited to, excessive noise, disorderly conduct, illegal parking, vandalism, overcrowding, traffic congestion and excessive accumulation of refuse. The City Council further finds and determines that these adverse impacts are related to the transitory nature of the occupants of Short-Term Rentals. The purpose of this Chapter is to establish regulations to address and mitigate these adverse impacts. This Chapter is not intended to regulate non-vacation type rental arrangements not generally characterized by the adverse impacts referenced in this Section.

9.38.020 Short-Term Rental - Defined

Short-Term Rental" means the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes of 30 consecutive days or less in the City, including single-family or duplex units.

9.38.030 Short-Term Rental - Permit Required/Penalty

Any Short-Term Rental shall obtain a Short-Term Rental Permit pursuant this Chapter. Any person operating a Short-Term Rental without a permit shall be guilty of a misdemeanor.

9.38.040 Short-Term Rental Permit - Requirements

Short-Term Rentals shall be regulated in all **residential** zones including residential developments in PRDs (Planned Residential Districts), as follows:

A. Application Requirements:

1) Applicants shall submit an application for a Short-Term Rental Permit to the City of Encinitas each year for each unit. The application for a permit shall be accompanied by a non-refundable application fee as established by the City Manager, however, the fee shall be no greater than necessary to defer the cost incurred by the City in administering the provisions of this Chapter. Although the applicant may be the property owner or the property owner's agent, the property owner shall be the party responsible for compliance with all provisions of this Chapter and all of the laws regulating Short-Term Rentals.

EXHIBIT NO. 5

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
Suggested
Modification #3
Regulations for Short-term Vacation Rentals
Page 1 of 5
Californa Coastal Commission

- 2) Upon change of property ownership or material fact, a new application for a Short-Term Rental permit shall be required to continue operation of the Short-Term Rental and within 14 days of said change the property owner or his or her agent shall submit the required application and fee.
- 3) Granting or Denial of Application: The application shall be granted unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code and other applicable law.
- 4) Any false statements or information provided in the application are grounds for revocation and/or imposition of penalties, as outlined within this Chapter.

B. Operational Requirements:

- 1) Applicants shall use "best efforts" to insure that the occupants and/or guests of the Short-Term Rental unit do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Encinitas Municipal Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs.
- 2) Applicants shall, upon receiving notification that occupants or tenants of his or her Short-Term Rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the Encinitas Municipal Code or applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol or the use of illegal drugs, respond in a timely manner within 2 hours of the time the initial call (complaint) was made, and within 24 hours of the initial call use best efforts to prevent the recurrence of such conduct by the occupants and to take corrective action to address any violation. Failure to respond timely to two (2) or more complaints regarding tenant violations is grounds for penalties as set forth in this Chapter. It is not intended that the property owner, local agent or contact person act as a peace officer or place himself or herself in an at-risk situation.
- 3) The property owner or agent shall limit overnight occupancy of the short-term rental unit to a specific number of occupants not to exceed **two persons per bedroom plus one additional person per dwelling**. All other applicable occupancy laws shall apply.
- 4) The property owner shall limit the number of vehicles of overnight occupants to the number designated in the permit which shall not exceed the number of designated on-site parking spaces. All designated on-site parking spaces shall be made available for the vehicles of occupants.
- 5) The property owner or agent of a Short-Term Rental unit shall comply with all the provisions of the Encinitas Municipal Code.

- 6) Trash and refuse shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles pursuant to Section 11.20.090 of the Encinitas Municipal Code.
- 7) The City Manager or his or her designee shall have the authority to impose additional standards and/or conditions to Short-Term Rental permits as necessary to achieve the objectives of this Chapter.
- 8) Interior Display of Short-Term Rental Permit. Applicants shall affix the Short-Term Rental Permit on the inside of the main entry door of each Short-Term Rental unit to which it applies. The interior display will also contain the maximum number of overnight occupants permitted to stay in the unit, the maximum number of vehicles for overnight occupants, and a 24-hour 7-day phone number of the private party responsible for the facility.
- 9) Exterior Display of Short-Term Rental Unit. Applicants shall display on the exterior of a Short-Term Rental unit, a notice provided by the City containing a 24-hour 7-day phone number for a private party responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.
- 10) Adjacent Property Owners Notified. Applicants are also required to provide adjacent property owners with the 24-hour 7-day phone number for a private party responsible for the facility.
- 11) Rental Agreements. Information on the permitted occupancy of the dwelling, parking capacity for each unit, and trash disposal requirements shall be stated in the rental information and agreement provided to prospective renters, prior to their occupancy of the unit.
- 12). The Operational Requirements may be modified by the City Manager based on site-specific circumstances for the purpose of allowing reasonable accommodation of a Short-Term rental. All requests must be in writing and shall identify how the strict application of the Operational Requirements creates an unreasonable hardship to a property, and if the requirement is not modified, reasonable use of the property for a short-term rental would not be allowed. Any hardships identified must relate to physical constraints to the subject site. Such hardships cannot be self-induced or economic. In addition, any modification to the Operational Requirements cannot further exacerbate an already existing problem.

9.38.050 Violations and Penalties

- A. Violations: The following conduct shall constitute a violation for which the penalties specified in subsection (B) may be imposed, or the penalties imposed and permit suspended:
 - The property owner has failed to comply with the standard conditions pursuant to this Chapter; or
 - The property owner has failed to comply with additional conditions imposed by the City Manager pursuant to the provisions of 9.38.040B7; or
 - 3. The property owner has violated any provision of this Chapter; or
 - 4. The property owner has failed to pay applicable taxes or fees.
- B. Penalties: The penalties specified in subsection (A) shall be as follows:
 - For the first violation within any 24 month period, the penalty shall be a fine of \$250:
 - For a second violation within any 24 month period, the penalty shall be a fine of \$500;
 - For a third violation within any 24 month period, the penalty shall be a fine of \$750;
 - For a fourth violation within any 24 month period, the penalty shall be a fine of \$1000.00 and suspension of the permit.

9.38.060 Imposition of Penalties/Suspension – Procedure

Penalties, including a notice of violation, shall be imposed, and permits shall be suspended, only in the manner provided in this Section.

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding

that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.

9.38.070 Permits and Fees not Exclusive.

Permits and fees required by this Chapter shall be in addition to any license, permit or fee required under any other chapter of this Code. The issuance of any permit pursuant to this Chapter shall not relieve the property owner of the obligation to comply with all other provisions of this Code pertaining to the use and occupancy of their property.

9.38.100 Private Actions to Enforce

Any person who has suffered, or alleges to have suffered, damage to person or property because of a violation of this Chapter may bring an action for money damages and any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated this Chapter.

Nothing herein shall be deemed or construed to create any right of action against the City or any of its officers, employees, or agents. The sole purpose and intent of this Section is to create a right of action between private parties, entities and interests, which are or may be impacted or affected by various aspects of Short-Term Rentals within the City.

DECEMBER 1, 2005 MEETING WITH COASTAL COMMISSION STAFF

SHORT-TERM VACATION RENTAL LCPA

1.	Talking Points - Short-term Vacation Rental	Page #
2.	Visitor Serving Commercial and other Commercial Zones	5
3.	Hotel / Motel Room Rates	6
4.	APA Article – Short-Term Vacation Rentals: Residential or Commercial Use?	7
5.	Discussion about <i>Ewing v. City of Carmel-by-the-Sea</i> .	11
6.	Ewing v City of Carmel-by-the-Sea, Court of Appeals.	13
7	Tipping Point Analysis, Dr. James Nicholas	26

EXHIBIT NO. 6

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
City's Response to
October 2005 Staff
Report

Page 1 of 27

California Coastal Commission

TALKING POINTS SHORT-TERM VACATION RENTAL

CITY OF ENCINITAS LOCAL COASTAL PROGRAM AMENDMENT

<u>Potential Solution:</u> The City can amend their Zoning Code to explicitly allow by right short-term vacation rentals in Mixed Use Zones and General Commercial zones along the Coast Highway 101 corridor.

Consistent with Coastal Commission action for the City of Imperial Beach.

COMPARISON IMPERIAL BEACH APPROVED LCPA AND ENCINITAS PROPOSED LCPA						
Imperial Beach proposal	Encinitas proposal					
Prohibits short-term vacation rentals in residential zones.	Prohibits short-term vacation rentals in residential zones.					
2. 9 existing vacation rentals phased out in 5 years. (Allowed a limited number of existing short-term rentals in residential zones for a 5 year period.)	2. 150 existing vacation rentals (estimate) allowed to remain – no phase out period. (Allows those existing vacation rentals to exist as nonconforming uses.)					
3. Short-term vacation rentals permitted use in C-1 (General Commercial), C-2 (Seacoast Commercial), and MU-2 (Mixed Use Overlay).	3. Encinitas willing to amend LCP to allow by right short-term vacation rentals in Mixed Use and General Commercial Zones along Hwy 101. (Currently vacation rentals are subject to a use permit.)					

2. Factors to consider.

- 2.1 Lodging / overnight accommodations.
 - o All lodging / accommodations = 1461 rooms.
 - ✓ 670 hotel rooms.
 - ✓ 138 rooms coming on-line in about 1 to 2 years.
 - ✓ 171 spaces at San Elijo Campground.
 - √ 150 existing Short-term vacation units.
 - ✓ 332 potential short-term vacation units. (332 dwellings currently exist in the Mixed Use and Commercial zones along Hwy 101.)
 - Lodging west of Hwy 101 or within 5 minute walk to beach = 1211 rooms.
 - ✓ 468 hotel rooms.
 - ✓ 138 rooms coming on-line in about 1 to 2 years.
 - √ 171 spaces at San Elijo Campground.
 - √ 135 existing Short-term vacation units.
 - ✓ 299 potential short-term vacation units. (Estimate 90% of total dwellings to be west of Hwy 101 in Mixed use and Commercial Zones.)

2.2 Vacancy rates.

- o All Hotels:
 - ✓ <u>44.6%</u> average for 2004-05 fiscal year
 - ✓ 35.1% (Jul-Sept) low.
 - ✓ 52.9% (Jan-Mar) high.
- o Hotels west of Hwy 101 or within 5 minute walk to beach:
 - √ 45.7% average for 2004-05 fiscal year
 - ✓ 34.1% (Jul-Sept) low.
 - √ 53% (Jan-Mar) high.

2.3 Average hotel rental rate: Range - \$80 to \$130.

- 2.4 Average Short-term Vacation rentals rate: Range \$1,885 to \$3,189 per week.
 - o Current estimates are about 150 plus vacation rentals
 - o \$269 to \$456 per night, however, most did not offer a nightly rate.
- 2.5 Encinitas has 189 acres in Mixed Use, VSC and General Commercial Zones along Hwy 101 and I-5 corridors all of which accommodate hotel uses.

2.6 APA article - Short-Term Vacation Rentals: Residential or Commercial.

- o "Survey revealed that a significant percentage experienced an increase in conflicts" with "residential areas."
- "Impact of a short-term vacationer compared with year-round residents can be significant."
 - ✓ "Noise and light pollution."
 - ✓ Less inclined to "respect neighbor diplomacy."
 - ✓ "Late-night music and merrymaking."
 - ✓ "Garbage taken out to street on off days."
 - √ "Dogs at large."
 - ✓ "Illegal parking."
 - ✓ "Negligent property maintenance."
- o "Fuels speculation in a rising housing market" by investment buyers.
- "Investment buyers (non-local people) are less inclined to care if a neighboring property is a short-term rental," creating a "snowball effect that eventually replaces year-round residents with vacationers."

2.7 Ewing v City of Carmel - Court of Appeals

- Homeowners challenged the City's prohibition of short-term vacation rentals in residential zones.
- o Appellate Court upheld City's action.
- O Stated that the residential character of a neighborhood is threatened when a significant number of homes are not occupied by permanent residents.
- Transient rentals undoubtedly affect the essential character of a neighborhood and the stability of a community.

2.8 Tipping Point Analysis

- O Evaluated the impact of short-term rentals on residential properties.
- o Research showed:
 - "That property values increase as the percentage of short-term rentals in an area increases."
 - ✓ However, "once the percentage of short-term rentals reaches 12% (the 'tipping point') overall property values start to decrease."

- "Permanent residential properties adjacent to short-term rentals tend to have declining rates of growth in property value due to the off-site impacts of shortterm rentals and their inherent incompatibility with permanent resident uses."
- "All property values may decline as the area converts to more high-intensity and commercial uses, effectively displacing desirable residential opportunities in the market."
- "Short-term rentals over-utilize infrastructure and the ecosystem," which will "negatively impact the community and property values."

2.9 Conclusions:

- o Prohibiting short-term vacation rentals does not hinder access to the coast.
 - ✓ Substantial number of available lodging rooms are located on Hwy 101 or
 within a 5 minute walk to beach.
 - Existing lodging provides affordable access to the coast.
 - Existing lodging is underutilized vacancy rates are high even during peak seasons.
 - ✓ Existing lodging is located where:
 - Conflicts with existing neighborhoods don't exist.
 - Access is off of circulation element roads.
- o Substantial supply of short-term vacation rentals currently exist.
- Allowing more short-term vacation rentals in residential zones would hinder coastal access due to excessive number of vehicles of renters and guests.
 - ✓ Many renters double up with two families.
- o Property values can decrease as the residential character changes.
- O Impacts of short-term vacationers can be significant.
- o Short-term rentals over-utilize infrastructure.
- O Action is consistent with previous action taken with Imperial Beach.

3. The City's proposal is consistent with our adopted LCP.

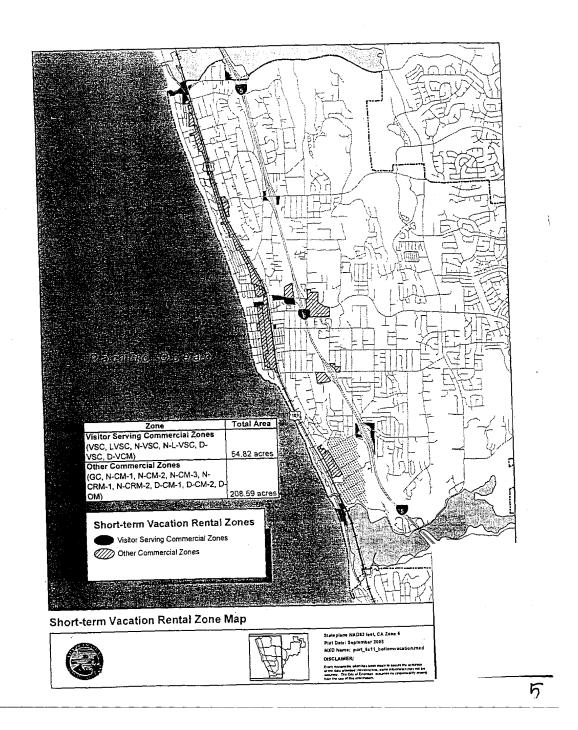
4 LCP Policy 1.13 (Land Use Element)—"visitor-serving commercial land use [short-term vacation rental] shall be located where <u>it will not intrude into existing residential communities</u>. This category applies in order to reserve sufficient land <u>in appropriate locations</u> expressly for commercial recreation and visitor-serving uses ..." The policy further defines what visitor-serving uses are, which include "tourist lodging."

"The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. *Policy 1.13 amended 5/11/95 (Reso. 95-32)*"

- 4 LCP discussion, page LU-4—states "the goals and policies ... are concerned with both preserving the integrity of the five communities ... and [that] future growth must be managed in a sensible and rational manner."
- 4 LCP discussion, page LU-4—emphasizes "the need for <u>future development to be</u> <u>sensitive to the existing residents</u>."
- 4 LCP Policy 1.14 (Land Use Element)states "the City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate ... tourist-related ... uses."

An important aspect of the above LCP policies is to ensure the location of visitor-serving uses be in areas that avoid conflicts with residential neighborhoods and to enhance the "Highway 101 commercial corridor" by providing "tourist-related" uses. The preservation of the residential neighborhoods within the "five communities" requires that "future growth" [development] be done in a "sensible and rational manner" that is "sensitive to the existing residents" and does "not intrude into existing residential communities."

LCP Policy 1.13 supports the separation of visitor-serving uses from established residential uses. In justifying the need for a visitor-serving land use category, the policy explicitly acknowledges the need to locate such areas is so they "do not intrude into existing residential communities." This implies that visitor-serving uses are not "appropriate" in residential locations. Thus the policy has a <u>dual aim</u> of keeping non-visitor serving uses out of VSC zones and visitor-serving uses out of residential areas.



Draft

	Hot	el / Motel	Room Rates		
		City of F	Encinitas		
		2005 \$	Survey		
	Lodging	# of	# of Rooms Wt of	Low	High
	, , , , , , , , , , , , , , , , , , ,		Hwy 101 or w/in 5		
			min, walk to beach		
1.	Best Western**	94	94	\$100	\$150
2.	Cardiff by the Sea**	17	17	\$140	\$285
3.	Comfort Inn	101	0	\$90	\$100
4.	Days Inn**	124	124	\$70	\$129
5.	Econo Lodge*	30	30	\$65	\$65
6.	Holiday Inn	101	0	\$89	\$149
7.	Leucadia Beach*	20	20	\$70	\$89
8.	Leucadia Inn*	7	7	\$99_	\$149
9.	Moonlight Beach*	24	24	\$75	\$89
10.	Motel Villa Mar*	15	15	\$60	\$60
11.	Ocean Inn*	51	51	\$59	\$152
12.	Portofino Beach*	45	45	\$69	\$159
13.	Pacific Surf*	27	27	\$55	\$65
14.	Royal Motor Inn*	9	9	0	0
15.	Seabreeze B&B**	5	5	\$80	\$175
16.	San Elijo Campground*	171	171		
17.	Short-term Rentals*	150	135***		
Tota	Rooms	991	774		L
Avei	Average Room Rate			\$80	\$130
	re Lodging				
19	Potential Short-Term	332	299***		1
	Rentals in Com. Zones*		<u></u>		1
20	La Costa Resort*	131	131		
21	Time share**	7	7	<u> </u>	
Tota	Total all Rooms		1211		1

^{*} Hotels / Motels west of Highway 101. (Short-term vacation rentals estimate is based on a survey of the Web sites, most of which were located west of Hwy 101.)

** Within 5 minute walk to beach.

*** Estimate 90% of total dwellings ("potential short-term rentals") to be west of Hwy 101.

Vacancy Rate 04/05 Fiscal Year								
	1 st Qtr Jul-Sept 2004	2 nd Qtr Oct-Dec 2004	3 rd Qtr Jan-Mar 2005	4 th Qtr Apr-June 2005	Year Average			
All Hotel / Motels	35.1%	52.1%	52.9%	38.2%	44.6%			
Hotels wt of 101 (& w/in 5 min, walk to beach)	34.1%	52.4%	53.0%	43.2%	45.7%			

NEWS - APA

Short-Term Vacation Rentals: Residential or Commercial Use?

MARCH 2002

AMERICAN ASSOCIATION



Short-Term Vacation Rentals: **Residential or Commercial Use?**

By Nate Hutcheson

What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side? ... A survey of almost 40 touristoriented communities was taken for this issue of Zoning News.

mericans love to vacation as much as they love their avacation destinations, and demographers have noticed. New migration patterns into some of the fastest growing communities in the country—resort towns—suggest that many people are relocating to the places that were once just summer or weekend getaways. According to Peter Wolf, author of Hos Towns, "A new species of American is on the move: not, as in the past, the needy, but the comfortable, well-educated, and well-trained; not the job seekers and risk takers, but those with leisure, choices, and the wherewithal to seek out the best." By Wolf's estimates, this migration includes anywhere from 700,000 to 1.6 million people per year. The strong 1990s economy brought a wave of second-home purchases as investments and family retreats. Resort areas—coastal, mountain, and lakeside—have what these trendsetters want: natural beauty, fresh air, and recreation. Communities with such amenities are prime candidates for conflicts in land-use

planning.
What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side? Regulations that govern short-term rentals in residential districts are getting more attention as planners and residents notice that these vacation homes can have a much greater impact on the community than those that house yearround residents. Angry neighbors say short-term rentals look like single-family homes but function more like commercial uses. The crux of the matter for planners is finding a balance between the interests of year-round, seasonal, and vacationing people while considering the effects on property rights, economic vitality, and the sanctity of residential neighborhoods.

The dynamics vary from one town to the next, but the issue seems to grow more contentious as more vacationers and yearround residents live next to one another. A survey of almost 40 tourist-oriented communities was taken for this issue of Zoning News in order to shed light on this increasingly vexing land-use phenomenon.

Relevance and Research Background In 2001, APA's Planning Advisory Service recorded an increase in the number of inquiries about planning for and regulating short-term rental properties in residential areas—particularly single-family districts. The survey revealed that a significant percentage experienced an increase in conflicts between these and adjacent land uses. While some have recently drafted ordinances to address the short-term rental problem, others are still in the process of doing so or have expressed the need for change, and because resort communities have different attitudes toward tourism, each approaches the issue in a different way.

impacts

The impact of a short-term vacationer compared with year-round residents can be significant. Seasonal populations live and work in the community, and thus become somewhat integrated. Naturally, they increase demands on infrastructure and services. Impacts associated with short-term vacationers, however, are more nuisance related, often generating noise and light pollution. Generally, the shorter the stay, the less inclined one might be to respect neighbor diplomacy. Late-night music and merrymaking, floodlights, garbage taken out to the street on off days, dogs at large, illegal parking, and negligent property maintenance are

garden-variety complaints often cited by annoyed neighbors. Neighbors, planners, and property owners point to the correlation between such problems and length of stay for the rental property. In other words: the shorter the stay, the higher the impact. The stereotypical "weekend warrior"—trying to pack the most fun into the least amount of time—will invariably generate more trips to the store or beach, keep later hours, and create a greater disruption with light and noise. Still, for some communities, the concern is not so much the negative impacts as the lack of community involvement typical of transients:

Affordable Housing

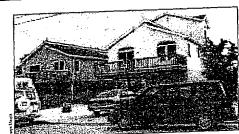
Amore insidious problem with short-term rentals is their impact on housing costs. When property owners decide to increase their "rent stream" with short-term rental agreements rather than renting by the season or year, they essentially "squeeze" the

Politics

Planners admit to a dilemma: Many property owners rely on the rent streams and spending dollars generated by vacationers, but locals want to preserve their neighborhood's residential character. Furthermore, business owners would prefer to see an expansion of the local vacation lodging market. When property owners are unwilling to forfeit certain rights, leaving them at odds with neighbors who want the relative quietude expected in a single-family neighborhood, what should be done?

Indeed, people "vote with their feet" when choosing vacation

destinations of a permanent home, so politicians try to appease the greatest number of constituents. Invariably, residents will rhreaten to abandon a once-beloved community or resort locale if renting a house on the beach or settling into a neighborhood means an endless stream of nuisances from disruptive vacationers.







(Above, left) Short-term rentals in Ship Bottom, New Jersey. Paved yards and excessive numbers of vehicles at short-to rensal houses are a common complaint of neighbors. Believe is or not, these are the fronts of the houses. (Above, right) Most short-term renters are unaware of garbage collection schedules. (Left) Boat and recreation vehicle parking is an unpleasant sight for neighbors in thit Monroe County. Florida, neighborhood.

supply of housing, pushing up the demand and, subsequently, the cost. Ty Simrosky, planning director for Key West, Florida, says. It's another means of financing the acquisition of local housing by non-local people and it fuels speculation in a rising housing market. Simrosky explains that by allowing short-term rentals, investors can cover the carrying costs of a house for a year or two while the property appreciates in value and then sell it for a healthy profit. Simrosky also says that while long-term homebuyers are strongly opposed to short-term rentals in a prospective neighborhood, investment buyers are less inclined to care if a neighboring property is a short-term rental. This can

prospective neighborhood, investment buyers are less inclined to care if a neighboring property is a short-term rental. This can create a snowball effect that eventually replaces year-round neighborhood residents with vacationers.

Communities most affected by a housing shortage are those with businesses that rely on lower-paying service and tourism jobs. High housing costs have pushed many workers out of the community, even beyond communiting distance. Simrosky also speculates that there are workers being bused in from the community, even beyong communing distance. Simrosky also speculates that there are workers being bused in from the Florida mainland to sleep in bunk-house conditions just to work for three- or four-day periods in Key West.

Residents of Monroe County, Florida, put the issue on a ballot, narrowly deciding—51 to 49 percent—against allowing short-term rentals in improved subdivisions (single-family districts). Subdivisions retained the right to vote on the issue separately.

Health, Safety, and General Welfare

Historically, property owners in resort communities could rent a home, regardless of the duration of the stay, by claiming that the nome, regardless or the duration of the stay, by claiming that the house was not used "primarily for commercial purposes." What this really meant was that the structure could not be used for such purposes for more than 50 percent of the year. However, planners claim that approach is difficult to monitor and easy to abuse. Most feel zoning codes and a licensing system offer a better solution despite the time and expense required for

administering and enforcing new regulations.

Most of the surveyed communities deal with short-term rentals through the zoning code. Imperial Beach, California, justifies its interim short-term rental ordinance with a purpose and intent that states "there is a current and immediate threat to the public health, safety, or welfare of its citizens by owners or their agents renting or selling units for periods of thirty consecutive calendar days or less . . . and that such rentals in the residential zones of the city...may create adverse impacts.

Commonly cited reasons for drafting an ordinance or provision for short-term rentals include protecting residential character, maintaining housing affordability, managing infrastructure and service requirements, and complying with hurricane evacuation capacity. Zoning ordinances, business permits, and transient occupancy taxes are ways of managing this quasi-commercial use.

Definitions are often at the root of governing short-term rentals. Definitions are orien at the root of general general between Unfortunately, many zoning codes have a discrepancy between defined terms and the provisions that use them. Terms are sometimes defined at the beginning of the ordinance but then never used in the provisions. Conversely, provisions may contain undefined terms, rendering the code too ambiguous. For example, some towns prohibit "transient rentals" in certain districts without

about what actually is a short-term rental. Length of stay (where not determined by a definition of transient) is an important factor in defining short-term rentals.

There is a wide range of occupancy tenure in a short-term tental ordinance. Communities specify the maximum length of stay in days, weeks, or months. Some simply distinguish the use by type of occupant, usually transient or tourist, in which case the terms should be clarified in the definitions section.

Measures of occupants' permanency can include everything from specifying the length of stay to whether the residence is the legal address of its occupants. At this fundamental level, communities can best begin to guide local land-use practices. Here, parameters are set largely according to the nature of a community's tourist population, the importance of tourism on the local economy, and community goals.





(Above, left) Short-term rental property prominently displayed on a corner lot in Lewes, Delaware. The impact: Vehicles of vacationers spilling over from the driveway onto the street. The problem: This type of impact occurring for weeks or months on end. (Above, right) Apparently, more pavement, less yard means more parking and less yard maintenance for this short-term rental property in Monroe County, Florida. (Right) Driveway signs for a Ksawah Island, South Carolina, short-term rental welcome the next round of families sharing a house.



defining the term "transient." Distinctions can be easily made between the various types of lodging and rental property, and only those uses that are specifically listed as permitted or conditional should locate to designated districts. However, where single-family residences are a permitted use, and the length of tenure is unspecified, nothing in the ordinance can stop property owners from renting the house on a short-term basis.

Definitive Criteria

For communities grappling with such disputes, clear definitions are essential. Other terms for short-term rentals include transient commercial use, vacation rental home, vacation property, transient lodging, resort dwelling, and resort housing. Because transient also is used in the definition of other terms, it too should be defined in context to alleviate confusion and ambiguity. These terms are defined using various criteria, such as structure type, length of stay, measures of occupants' permanency, number of occupants, and the type of occupants (family members or unrelated people).

The type of structure (single or multifamily) often is not

specified in the ordinance, allowing room for interpretation

Regulating the number of occupants also can mitigate the impacts of rental properties. Some communities specify total number of occupants by persons per bedroom, family members, or non-related persons, not withstanding local fire codes. Islamorada, Florida, limits occupancy to two people per bedroom plus two additional persons. Other communities simply limit occupancy to single family, as defined in their ordinance (see "Definitions and Distinctions for examples and commentary on relevant terms).

Defining family also can complicate the matter. Restricting

the use of single-family homes to families can be a difficult way to regulate short-term rentals, mainly because the term family is open to a wide range of literal and legal interpretations. Even so, 'traditional" families are not devoid of impact risks, including noisy infants or rowdy reenagers. The ever-changing family paradigm does not make it the best measure by which to regulate short-term rentals.

Once Defined, Where Are Short-term Rentals Allowed?

Tolerance levels about the impacts of short-term rentals will vary, among communities. Communities with an intense interest in

Vermont Journal of Environmental Law Volume 6 2004-2005

Discussions about *Ewing v. City of Carmel-by-the-Sea*.

Vermont Journal of Environmental Law

Volume 6 2004-2005

Protection of a city's "character" and "stability" has served to justify a city's invocation of its police power. In *Ewing v. City of Carmel-by-the-Sea*, homeowners challenged the constitutionality of the city's zoning ordinance prohibiting transient commercial use of residential property for remuneration for less than 30 consecutive days (basically renting your residence for less than 30 days). [50] The homeowners claimed the ordinance amounted to a taking, was void as being arbitrary and vague, and violated their right of privacy. [51] In ruling for the city, the appellate court held that the ordinance was a proper exercise of the city's land use authority under its police power "to enhance and maintain the residential character of the city." [52] The court stated that this is a wholly proper purpose of zoning:

It stands to reason that the 'residential character' of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days . . . [Transient] rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow without engaging in the sort of activities that weld and strengthen a community. [53]

In holding that the ordinance was related to a legitimate governmental goal, the Court continued:

Blessed with unparalleled geography, climate, beauty, and charm, Carmel naturally attracts numerous short-term visitors. Again, it stands to reason that Carmel would wish to preserve an enclave of single-family homes as the heart and soul of the city. We believe that this reason alone is 'sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. [54]

Ewing v City of Carmel-by-the-Sea Court of Appeals 234 Cal. App. 3d 1579

See Highlighted Areas.

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Court of Appeal, Sixth District, California.

John W. EWING, et al., Plaintiffs and Appellants,

V.
CITY OF CARMEL-BY-THE-SEA, Defendant and Respondent.
No. H007702.
Oct. 9, 1991.
Review Denied Jan. 8, 1992.

Owners of single family, residential property brought action challenging city ordinance which prohibited rental of residential property for fewer than 30 days. The Superior Court, Monterey County, No. M 21130, Harkjoon Palk, J., upheld ordinance, and homeowners appealed. The Court of Appeal, Elia, J., held that: (1) case came within public interest exception to application of collateral estappel doctrine; (2) ordinance was not unconstitutional "taking"; (3) ordinance was not unconstitutionally vague and overbroad; and (4) ordinance did not violate fundamental rights of association or privacy and did not warrant stricter scrutiny than was normally accorded zoning laws.

West Headnotes

[1] KeyCite Notes

= 228XIV(A) Judgments Conclusive in General = 228k634 k. Nature and Requisites of Former Adjudication as Ground of Estoppel in General.

Most Cited Cases

City would be allowed to litigate validity of ordinance prohibiting rental of residential property for fewer than 30 days under public interest exception to application of collateral estoppel doctrine, even if doctrine were otherwise applicable; city and its residents had abiding and continuing interest in zoning.

[2] KeyCite Notes

\$\(\sigma_{414}\) Zoning and Planning
\$\sigma_{414X}\) Judicial Review or Relief
\$\sigma_{414X}(C)\) Scope of Review
\$\sigma_{414X}(C)\) Presumptions
\$\sigma_{414k672}\) k. Validity of Regulations in General. Most Cited Cases

Zoning ordinances are presumptively constitutional.

[3] KeyCite Notes

←148 Eminent Domain

←148I Nature, Extent, and Delegation of Power

←148k2 What Constitutes a Taking; Police and Other Powers Distinguished

←148k2.10 Zoning, Planning, or Land Use; Building Codes

←148k2.10(4) Zoning and Permits

←148k2.10(6) k. Particular Cases. Most Cited Cases

(Formerly 148k2(1.2))

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←414 Zoning and Planning Ke<u>yCite Notes</u>
←414II Validity of Zoning Regulations
←414II(B) Regulations as to Particular Matters
←414k76 k. Particular Uses. Most Cited Cases

Zoning ordinance prohibiting rental of residential property for fewer than 30 days was not unconstitutional "taking"; ordinance was rationally related to preservation and enhancement of residential character of neighborhood and stability of community, and ordinance left property owners with several economically viable uses of their property. U.S.C.A. Const.Amend. 5.

[4] KeyCite Notes

Zoning ordinance does not constitute "taking" simply because it narrows property owner's options. 0.5.C.A. Const.Amend. 4.

[5] KeyCite Notes

City did not act arbitrarily in passing ordinance prohibiting rental of residential property for fewer than 30 days while allowing other commercial uses of property, so as to render ordinance unconstitutional; home occupations permitted by city ordinances did not threaten basic character of residential neighborhood but, rather, strengthened community by fostering talents of its residents. <u>U.S.C.A. Const. Amend. S.</u>

[6] KevCite Notes

City, in passing ordinance prohibiting rental of residential property for fewer than 30 days, did not act arbitrarily in drawing line at 30, rather than 29, days; city apparently did not wish to discourage month-to-month tenancy and 30-day cutoff was reasonably linked to city's desire to curtail only short-term occupancies for remuneration. U.S.C.A. Const.Amend. 5.

[7] KeyCite Notes

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€414 Zoning and Planning -414II Validity of Zoning Regulations ←414II(A) In General ←414k28 k. Certainty and Definiteness. Most Cited Cases

City ordinance prohibiting transient commercial use of residential property for "remuneration" was not unconstitutionally vague and overbroad, but was sufficiently clear to allow people of common intelligence to understand its meaning; given ordinance's repeated use of word "commercial," court did not discern intention by city to police bread-and-butter gifts. U.S.C.A. Const Amend. S.

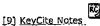


361 Statutes

√361 Statutes

5361k45 Validity and Sufficiency of Provisions

Person of ordinary intelligence should have reasonable opportunity to know what is prohibited by statute. U.S.C.A. Const.Amend. 5.



€=92 Constitutional Law ←92III Distribution of Governmental Powers and Functions (=92111(A) Legislative Powers and Delegation Thereof

≎-92k59 Delegation of Powers ←92k60 k. In General. Most Cited Cases

Vague law Impermissibly delegates legislative job of defining what is prohibited to policemen, judges, and juries, creating danger of arbitrary and discriminatory application. U.S.C.A. Const. Amend. 5.



<-414 Zoning and Planning 414II Validity of Zoning Regulations 414II(B) Regulations as to Particular Matters ←414k76 k. Particular Uses. Most Cited Cases

Ordinance prohibiting rental of residential property for fewer than 30 days did not violate fundamental rights of association or privacy and did not warrant stricter scrutiny than was normally accorded zoning laws, as ordinance focused on use, rather than users; property owners were free to live with whom they wished, could entertain whom they wished, and could rent to whom they wished, as long as occupancy, possession or tenancy lasted at least 30 consecutive calendar days. West's Ann.Cal. Const. Art. 1, 5 1; U.S.C.A. Const. Amends. 1, 3-5, 9.

[11] KeyCite Notes

€414 Zoning and Planning €414X Judicial Review or Relief €=414X(C) Scope of Review

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=414X(C)3 Presumptions 414k672 k. Validity of Regulations in General, Most Cited Cases

Court would not assume that city intended to invade constitutional rights in enforcing ordinance which prohibited rental of residential property for fewer than 30 days.

**383 *1583 Michael Masuda, Noland, Hamerly, Etlenne & Hoss, Salinas, for plaintiffs and

appellants.

Donald G. Freeman, City Atty., City of Carmel-By-The-Sea, for defendant and respondent. Daniel J. Curtin, Jr., Ann R. Danforth, McCutchen, Doyle, Brown & Enersen, Walnut Creek, Louise H. Renne, City Atty., Burk E. Deventhal, Asst. City Atty., City and County of San Francisco, for amici curiae California Cities.

*1584 ELIA, Associate Justice.

Plaintiff homeowners challenge the constitutionality of a zoning ordinance prohibiting transient commercial use of residential property for remuneration for less than 30 consecutive days. The trial court upheld the ordinance. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are owners of single-family, residential property zoned R-1 in the City of Carmel-by-the-Sea. Plaintiffs challenge Ordinance No. 89-17, unanimously adopted by the Carmel City Council in May 1989. The Ordinance prohibits the "Transient Commercial Use of Residential Property for Remuneration ... in the R-1 District."

The Ordinance defines the "transient commercial use of residential property" as "the commercial use, by any person, of Residential Property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or **384 other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than thirty (30) consecutive calendar days." The Ordinance defines "remuneration" as "compensation, money, rent, or other bargained for consideration given in return for occupancy, possession or use of real property. The Ordinance provides that "[a]ny Person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who arranges or negotiates for the use of Residential Property ... and "[a]ny Person who uses, or allows the use of, Residential Property in violation [of the ordinance] is guilty of an infraction for each day in which such Residential Property is used, or allowed to be used...." To enforce the Ordinance, "[t]he City Attorney may seek legal, injunctive, or other equitable relief

Plaintiffs filed this action in June 1989, seeking declaratory and injunctive relief, as well as an award of damages for violation of their civil rights under 42 U.S.C. § 1983 and an award of attorney fees under 42 U.S.C. § 1988. In August 1989, the trial court preliminarily enjoined Carmel from enforcement of the Ordinance. In October 1990, after trial, the court lifted the preliminary injunction and entered judgment for Carmel, finding the Ordinance to be "valid and enforceable." Plaintiffs appeal.

*1585 DISCUSSION

Plaintiffs contend the doctrine of collateral estoppel bars Carmel from adopting and litigating the validity of Ordinance No. 89-17. Assuming alternatively that collateral estoppel does not apply, plaintiffs contend the Ordinance is constitutionally infirm in several respects. They maintain that it violates their rights of privacy and association, substantive and procedural due process, and equal protection.

[1] We begin with plaintiffs' argument regarding collateral estoppel. A decade ago, Carmel enacted a series of ordinances by which it sought to regulate transient rentals. While the final version adopted in 1981 was worded quite differently from the version at Issue here, the Intent and effect were essentially the same. The 1981 ordinance, like Ordinance No. 89-17, prohibited the rental of residential property for fewer than 30 days.

Some of the same homeowners involved in this suit challenged the earlier ordinances. The trial court permanently enjoined enforcement of the 1981 ordinance, finding it to be "unconstitutional as it invades the rights of association, privacy, and due process. The Court further finds that the Ordinance is over-broad and does not substantially effect its stated goals." Carmel did not appeal. Plaintiffs maintain that Carmel is collaterally estopped from relitigating the matter.

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Given the difference in wording of the two ordinances, we think it doubtful the doctrine of collateral estoppel applies. In any event, we conclude that this case comes within the public interest exception to application of the doctrine.

In Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal. 2d 749, 22 Cal. Rptr. 14, 371 P.2d 758, the district liquor control administrator instituted successive proceedings seeking to revoke the beer and wine wholesale license of a chain of retail grocery stores. The first proceeding was resolved in the stores' favor. The second proceeding challenged the stores' operations during a different period of time and under a revised statute. But the stores argued that the administrator was collaterally estopped from relitigating the matter because neither the statute nor the stores' methods of operation had significantly changed since the first proceeding. The Supreme Court observed that res judicata should not be applied when it may have an adverse effect on third parties or when public interest requires that relitigation not be foreclosed. (Id. at p. 758, 22 Cal.Rptr. 14, 371 P.2d 758.) "In the present case both of these factors, i.e., public interest and effect upon third persons, strongly indicate that the prior determination of the board should not **385 operate to preclude either the department or the courts from reexamining the statute *1586 and applying the correct interpretation...." (Ibid.) The court noted that the statute "concers the public interest in an industry requiring close supervision and that it is an important part of an integrated and rather complex

licensing and price regulating system." (*Ibid.*)
In Chern v. Bank of America (1976) 15 Cal.3d 866, 872, 127 Cal.Rptr. 110, 544 P.2d 1310, the Supreme Court again "acknowledge[d] ... a sound judicial policy against applying collateral estoppel in cases which concern matters of important public interest." The court approved plaintiff's relitigation of certain banking practices, noting that federal and state statutes "evidence [] a strong interest in protecting the public through ... comprehensive scheme [s] of banking and financial regulations." (Ibid.) The court concluded: "Given the quality and intensity of the public interest

involved, a reexamination of the legal significance of recurring factual events in which the same plaintiff is involved should not be foreclosed under collateral estoppel principles." (*Id.* at p. 873, 127) Cal. Rptr. 110, 544 P.2d 1310; see also City of Sacramento v. State of California (1990) 50 Cal. 3d 51. 64- 65, 266 Cal Rptr. 139, 785 P.2d 522: Consumers Lobby Against Monopolies v. Public Utilities Com. (1979) 25 Cal 3d 891, 902, 160 Cal Rptr. 124, 603 P.2d 41.)

Similarly, a city and its residents have an abiding and continuing interest in zoning. And a zoning ordinance that does not pass muster today may—due to changed circumstances, changed language, or changed goals--pass muster only a decade later. We conclude that, even if the doctrine of collateral estoppel were otherwise applicable, the public interest exception to the doctrine permits a zoning authority to try again.

We turn to the constitutionality of Ordinance No. 89-17, beginning with plaintiffs' argument that the Ordinance constitutes a "taking" in violation of the Fifth Amendment. (U.S. Const., 5th Amend. ["No person shall be ... deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation."]; Chicago, Burlington & c. R'D v. Chicago (1897) 166 U.S. 226, 235-241, 17 S.Ct. 581, 584-586, 41 LEd. 979 [Fifth Amendment applies to the states through the Fourteenth Amendment].) Although plaintiffs offer their "taking" argument almost as an afterthought by way of supplemental briefing, we view it as the logical starting point for our constitutional analysis.

The dawn of the twentieth century marked the beginning of zoning laws in this country. (Euclid v. Ambler Co. (1926) 272 U.S. 365, 386, 47 S.Ct. 114, 117, 71 L.Ed. 303.) Until then, "urban life was comparatively simple...." (Ibid.) But the "great increase and concentration of population" and "the advent of automobiles and rapid transit street rail*1587 ways" created problems necessitating land use regulation. (Id. at pp. 386-387, 47 S.Ct. at 117-118.) In Euclid v. Ambler Co., the Supreme Court confronted for the first time a comprehensive zoning scheme, dividing the Village of Euclid, Ohio, into six use districts, which were further divided according to the permissible size of lots and height of buildings, Plaintiff landowner sought to enjoin enforcement of the Euclid ordinances, contending they deprived him of liberty and property without due process of law and deprived him of equal protection

The Supreme Court declared that zoning regulations must find their justification in the police power, asserted for the public welfare. (*Euclid v. Ambler Co., supra*, 222 U.S. at p. 387, 47 S.Ct. at p. 118.) The Court noted that the extent of the police power "varies with circumstances and conditions." (*Ibid.*) Likewise, "while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation." (Ibid.)

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The Supreme Court examined the reasons for comprehensive zoning and, particularly, for setting aside residential districts. In fact, in the Court's view, "[t]he serious question in the case arises over the **386 provisions of the ordinance excluding from residential districts, apartment houses, business houses, retail stores and shops, and other like establishments. This question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded." (Euclid v. Ambler Co., supra, 272 U.S. at p. 390, 47 S.Ct. at p. 119.) The Court observed that non-residential uses may have an increasingly deleterious impact on a residential district "until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed." (Id. at p. 394, 47 S.Ct. at p. 121.) The Supreme Court upheld the Euclid ordinances as a proper exercise of the police power, The Court concluded that even if Euclid's reasons for adopting the scheme, such as the preservation of residential areas, "do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." [Euclid v. Ambler Co., supra, 272 U.S. at p. 395, 47

*1588 Shortly before Euclid was decided, the California Supreme Court dealt with zoning ordinances in Miller y. Board of Public Works (1925) 195 Cal. 477, 234 P. 381. The City of Los Angeles issued plaintiff a permit for construction of a four-family flat. The City then revoked the permit pending adoption of a comprehensive zoning plan that would prohibit construction of a four-family flat on plaintiff's land. Plaintiff challenged the City's authority to enact zoning ordinances. Like the Court in Euclid, the court in Miller stressed the elasticity of the police power: "as a commonwealth develops politically, economically, and socially, the police power likewise develops, within reason, to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power." (Miller v. Board of Public Works, Supra, 195 Cal. at p. 484, 234 P. 381; see current Cal. Const., art. XI, § 7 [a city may "make and enforce within its ilmits all local, police, senitary, and other ordinances and regulations not in conflict with general laws"].) After concluding that zoning is indeed within the police power, the Miller court found that the Los Angeles zoning scheme was reasonably necessary to the public health, safety, morals or general welfare and that the scheme of districting and classification was fair and impartial. (195 Cal. at p. 489, 234 P. 381.)

The <u>Miller</u> court set forth what it considered to be the critical question regarding zoning: "whether or not there may be legally established, as a part of a comprehensive zoning plan, strictly private residential districts from which are excluded and absolutely prohibited general business enterprises, apartments, tenements, and like structures." (<u>Miller v. Board of Public Works, supra. 195 Cal. at p. 490, 234 P. 381.</u>) Not only was the <u>Miller court</u>'s question nearly the same as the "serious question" set forth in <u>Euclid</u>, but so also was the answer. "We are of the opinion that it may be done; that the establishment of [residential] districts as a part of a systematic and carefully considered and existing zoning plan is a legitimate exercise of the police power delegated to the municipality." (<u>Libid.</u>)

As we near the end of the twentieth century, the courts continue to confront a myriad of zoning disputes. The issues have evolved, often reflecting the increased affluence and mobility of some elements in our modern society. The law has also evolved, but the basic principles survive. Zoning ordinances are still presumptively constitutional. [Goidblatt v. Hempstead (1952) 369 U.S. 590, 594, 82 S.Ct. 987, 990, 8 L.Ed.2d 130; **387 Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604-605, 135 Cal.Rptr. 41, 557 P.2d 473.) But "[t]he application of a general zoning law to particular property effects a taking if *1589 the ordinance does not substantially advance legitimate state interests, see Nectow v. Cambridge, 277 U.S. 183, 188 [48 S.Ct. 447, 448, 72 L.Ed. 842] (1928), or denies an owner economically viable use of his land, see Penn Central Transp. Co. v. NewYork City, 438 U.S. 104, 138, n. 36 [98 S.Ct. 2646, 2666, n. 36, 57 L.Ed.2d 6311 (1978). The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, see Kaiser Aetna v. United States, 444 U.S. 164 [100 S.Ct. 383, 62 L.Ed.2d 332] (1979).

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the question necessarily requires a weighing of private and public interests." (Agins v. Tiburon (1980) 447 U.S. 255, 260-261, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106.)

In passing Ordinance No. 89-17, Carmel sought to implement goals set forth in its 1988 Revised General Plan. (See Gov.Code, § 65860 [zoning ordinance must be consistent with general plan].) Objective O1-12 states, for example: "Intensify enforcement of zoning codes to maintain the residential character of the city." Policy P1-37 provides: "Review and develop measures to restrict commercial short term rental of single family residences in the R-1 district." Policy P3-12 provides: "Preserve existing permanent housing and maintain the vital residential character of Carmel-by-the-Sea. Prohibit expansion of visitor oriented commercial uses such as transient rentals." Policy P3-18 provides: "Encourage the conversion of commercial transient housing to housing for permanent

In the Findings and Purposes appended to Ordinance No. 89-17, the City Council observed: "The purpose of the R-1 District is to provide an appropriately zoned and area within the City for permanent single-family residential uses and structures and to enhance and maintain the residential character of the City." The Council found that the use of single-family residential property for transient lodging was a commercial use inconsistent with the purpose of the R-1 District. Moreover, "[c]pmmercial use of single-family residential property for such purposes create unmitigatable, adverse impacts on surrounding residential uses including, but not limited to, increased levels of commercial and residential vehicle traffic, parking demand, light and glare, and noise detrimental to surrounding residential uses and the general welfare of the City. Such commercial use may increase demand for public services, including, but not limited to, police, fire, and medical emergency services, and neighborhood watch programs."

Plaintiffs submit declarations intended to show that transient use of R-1 property does not create the "unmitigatable, adverse impacts" cited by the Council. A paralegal reports she examined the Carmel Police Department's press log for the past two years and found just one "disturbing the peace" complaint and only five complaints of "blocked driveway" In the R-1 District. *1590 She found no complaints regarding "light and glare," "noise," or "transient rental use." The operator of a residential housecleaning service in the R-1 District for the past two years declares that he cleans "vacation homes" no differently from "permanent homes." He parks his car in the driveway of the house being cleaned and makes no more noise than would a homeowner cleaning his own house. He has never had any complaints from neighbors or from Carmel regarding activities connected to his service. John W. Ewing, the lead plaintiff in this action, declares that his home in the R-1 District is vacant approximately 40 to 50% of the time. When rented through a broker, it is occupied for at least one week by no more than one family or two couples. No maid, linen, or food service is provided. Ewing has never had complaints from his neighbors or from Carmel regarding use of his property. While plaintiffs have presented some evidence to counter the Council's finding that transient rentals increase traffic, parking **1388 demand, light and glare, noise, and the need for public services, they have not met Carmel's chief purpose in adopting Ordinance No. 89-17-"to provide an appropriately zoned land area within the City for permanent single-family residential uses and structures and to enhance and maintain the residential character of the City."

In Miller and Euclid, the highest courts of this state and of the land recognized that maintenance of the character of residential neighborhoods is a proper purpose of zoning. The California Supreme Court employed language now a bit dated yet plainly relevant to the case at hand: "[W]e think it may be safely and sensibly said that justification for residential zoning may, in the last analysis, be rested upon the protection of the civic and social values of the American home. The establishment of such districts is for the general welfare because it tends to promote and perpetuate the American home. It is axiomatic that the welfare, and indeed the very existence of a nation depends upon the character and caliber of its citizenry. The character and quality of manhood and womanhood are in a large measure the result of home environment. The home and its intrinsic influences are the very foundation of good citizenship, and any factor contributing to the establishment of homes and the fostering of home life doubtless tends to the enhancement not only of community life but of the life of the nation as a whole." (Miller v. Board of Public Works, supra, 195 Cal. at p. 493, 234 P. 381.) The court observed that with home ownership comes stability, increased interest in the promotion of public agencies, such as schools and churches, and "recognition of the individual's responsibility for his share in the safeguarding of the welfare of the community and increased pride in personal achievement which must come from personal participation in projects looking toward community

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betterment." (Ibid.) *1591 It stands to reason that the "residential character" of a neighborhood is threatened when significant number of homes -- at least 12% in this case, according to the record -- are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days. Whether or not transient rentals have the other "unmitigatable, adverse impacts" cited by the Council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow--without engaging in the sort of activities that weld and strengthen a community. Plaintiffs attempt to equate this case with Parr v. Municipal Court (1971) 3 Cal.3d 861, 92 Cal.Rptr. 153, 479 P.2d 353, in which the Supreme Court confronted a Carmel zoning ordinance prohibiting, among other things, sitting or lying upon public lawn. The ordinance was accompanied by a "Declaration of Urgency" explaining that it was geared toward " 'an extraordinary influx of undesirable and unsanitary visitors to the City, sometimes known as "hippies"....' " (Id. at p. 863, 92 Cal.Rptr. 153, 479 P. 2d 353.) The court concluded that the ordinance violated appellant's right of equal protection by discriminating against a social class. Plaintiffs quote from the concurrence in Building Industry Assn. v. City of Camarillo (1986) 41 Cal.3d 810, 825, 226 Cal.Rptr, 81, 718 P.2d 58: "An impermissible elitist concept is invoked when a community constructs a legal most around its perimeter to exclude all or most outsiders." Plaintiffs argue that the ordinance challenged in Parr and Ordinance No. 89-17 demonstrate Carmel's desire to build a legal moat. The ordinance challenged In Parr was struck down; thus, plaintiffs reason, Ordinance No. 89-17 should meet the same fate. We view the Ordinance here as very different from that in Parr, in which Carmel sought to ban entirely a certain element from the community. By Ordinance No. 89-17, Carmel does not seek entirely to ban short-term visitors. Indeed, we suspect that short-term visitors provide an economic **389 boon that Carmel would be loath to eliminate. Rather, Carmel wishes simply to confine the accommodations for short-term visitors to areas outside the R-1 District--where, according to the record, there are approximately 950 such transient units. Blessed with unparalleled geography, climate, beauty, and charm, Carmel naturally attracts numerous short-term visitors. Again, it stands to reason that Carmel would wish to preserve an enclave of single-family homes as the heart and soul of the city. We believe that this reason alone is *1592 "sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no

A zoning ordinance does not constitute a taking simply because it narrows a property owner's options. In fact, "[m]any zoning ordinances place limits on the property owner's right to make profitable use of some segments of his property," (Keystone Bituminous Coal Assn. v. DeBenedictis (1987) 480 U.S. 470, 498, 107 S.Ct. 1232, 1248, 94 L.Ed.2d 472; see, e.g., Griffin Development Co. v. City of Oxnard (1985) 39 Cal.3d 256, 217 Cal.Rptr. 1, 703 P.2d 339 [condominium conversion ordinance]; Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 130 Cal.Rptr. 465, 550 P.2d 1001 [rent control law].) Justice Holmes stated the test in Penna. Coal Co. v. Mahon (1922) 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322: "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. So the question depends upon the particular facts." Ordinance No. 89-17 leaves plaintiffs with several economically viable uses of their property. Plaintiffs may live in their homes permanently or occasionally. They may rent their homes for remuneration for at least 30 days. They may allow others to use their homes, without remuneration, for any length of time. They may sell their homes or otherwise encumber them. The only thing they may not do, under the terms of Ordinance No. 89-17, is operate their homes as "bad and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging..." The intrusion into plaintiffs' bundle of ownership

substantial relation to the public health, safety, morals or general welfare." (Euc<u>lid v. Ambler Co.</u>,

supra, 272 U.S. at p. 395, 47 S.Ct. at p. 121.)

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rights--"the extent of the diminution," in Justice Holmes' words--is minimal and far outwelghed by the public interest in enhancing and maintaining permanent residential areas.

Plaintiffs insist, however, that Carmel has acted arbitrarily by restricting transient commercial use of residential property while other commercial uses are allowed. Carmel Ordinance No. 17.24.020 permits home occupations in the R-1 District, including "painting and related graphics, music, dance, dramatics, sculpture, writing, photography, weaving, ceramics, *1593 needlecraft, jewelry, glass and metal crafts. *Carmel Ordinance No. 17.24.030 allows the issuance of use permits for private kindergartens and nursery schools in the R-1 District. Plaintiffs contend that these uses result in even greater "unmitigatable, adverse impacts" than the uses prohibited by Ordinance No. 89-17. Whether or not home occupations increase traffic and parking problems and other adverse impacts, they do not threaten the basic character of a residential neighborhood. Rather, they strengthen the community by fostering the talents of its residents. (See County of Butte v. Bach (1985) 172 Cal.App. 3d 848, 865, 218 Cal. Rptr. 613 [home occupation exception in a zoning ordinance "implicitly premised upon expectations that the number and distribution **390 of such encroachments will not be intolerable and that persons who live where they work are likely to have less detrimental impact than nonresidents"].) Similarly, local kindergartens and nursery schools keep toddlers close to home, enhancing the quality of life and the stability of the community.

[6] Plaintiffs also complain that Carmel has drawn the line arbitrarily by permitting rentals of 30 consecutive days but not 29. Line drawing is the essence of zoning. Sometimes the line is pencil-point thin-- allowing, for example, plots of 1/3 acre but not 1/4, buildings of 3 floors but not 4, beauty shops but not beauty schools. In <u>Euclid</u>, the Supreme Court recognized that "in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation." (Euclid v. Ambler Co., supra, 272 U.S. at p. 389, 47 S.Ct. at pp. 118-119.) Nonetheless, the line must be drawn, and the legislature must do it. Absent an arbitrary or unreasonable delineation, it is not the prerogative of the courts to second guess the legislative decision. (See <u>Village of Belle Terre v. Borgas (1974) 416 U.S. 1, 8, 94 S.Ct. 1536, 1540, 39 L.Ed.2d 797; Berman v. Parker (1954) 348 U.S. 26, 35-36, 75 S.Ct. 98, 104, 99 L.Ed. 27.)</u>
In this case, it appears that Carmel did not wish to discourage month-to-month tenancies. Indeed, long-term tenants may create as stable a community as resident homeowners. Through Ordinance No. 89-17, Carmel wished to curtail only short-term occupancies for remuneration. We believe that the 30-day cutoff is not arbitrary but, rather, reasonably linked to that goal. (See Rev. & Tax. Code, & 7280 [establishing 30-day cutoff for city or county tax upon short-term occupancy in "hotel, inn, tourist home or house, motel, or other lodging"]; Civil Code, § 1943 [tenancy presumed to be monthto-month unless otherwise designated in writing].)

[7] [8] [9] Plaintiffs offer yet another Fifth Amendment argument, contending that Ordinance No. 89-17 is unconstitutionally vague and overbroad. *1594 Indeed, "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process." (Connally v. General Const. Co. (1926) 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322.) In Grayned v. City of Rockford (1972) 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222, the Supreme Court observed that a vague law may offend "several important values." First, the person of ordinary intelligence should have a reasonable opportunity to know what is prohibited. A vaque law may trap the innocent by not providing fair warning. Second, a vague law impermissibly delegates the legislative job of defining what is prohibited to policemen, judges, and juries, creating a danger of arbitrary and discriminatory application. Third, a vague law may have a chilling effect, causing people to steer a wider course than necessary in order to avoid the strictures of the law, Yet, "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." (Grayned v. City of Rockford, supra, 408 U.S. at p. 110, 92 S.Ct. at p. 2300, fn. omitted.) "Often the regulsite standards of certainty can be fleshed out from otherwise vague statutory language by reference to any of the following sources: (1) long established or commonly accepted usage; (2) usage at common law; (3) judicial interpretations of the statutory language or of similar language; (4) legislative history or purpose. [Citation.] While the dangers of discriminatory enforcement and ex post facto punishment posed by vague penal provisions must be considered in construing statutory language [citation], liberal regard will be given to legislative intent so as to give

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effect to the salutary objects of the particular law. [Citations.] Zoning regulations are no exception to the foregoing principles. [Citation.]" (Sechrist v. Municipal Court (1976) 64 Cal. App. 3d 737, 745, 134 Cal. Rptr. 733.) "In fact, a substantial amount of vagueness is permitted in California zoning ordinances...." (Novi v. City **391 of Pacifica (1985) 169 Cal.App.3d 678, 682, 215 Cal.Rptr. 439 [anti-monotony ordinance]; see also Guinnane v. San Francisco City Planning Com. (1989) 209 Cal. App. 3d 732, 257 Cal. Rptr. 742 [residential character ordinance].) In his declaration, plaintiff John Ewing criticizes Ordinance No. 89-17 as follows: "I do not know if the term 'remuneration' prohibits house-swaps, house-sitting, pet-sitting, or allowing someone to use my house in return for bartered consideration, dinner, or house or yard work. I also do not know whether the 'remuneration' has to be viewed from my point of view or my guests'. For example, many of my guests agree to use my Carmel home, either alone or when I am also present, only on condition they be allowed to do something for me in return. In some cases, I consider this clearly a 'bargained for consideration.' In other cases I do not, but I know my guests *1595 consider it bargained for consideration. Am I violating the ordinance in both cases, or only those in which I consider the deal to have been 'bargained for?' If it is only when I consider it 'bargained for,' how will Carmel distinguish between different owner's Interpretations of their friends' or guests' insistencies that they be allowed to do something for the homeowner in exchange for the right to occupy the residence? In fact, Carmel's attorney acknowledged at trial that housesitting and house swapping could be viewed as "bargained for consideration." Even a host and his overnight guest who treats him to dinner might find themselves on the wrong side of the Ordinance. At this point, we do not presume to know how expansively Carmel will interpret Ordinance No. 89-17. Although a very broad reading of "remuneration" or "bargained for consideration" might lead to absurd applications, as Carmel's attorney admitted, the legislative purpose is clearly to prohibit transient commercial use of residential property. The word "commercial" appears repeatedly at every critical juncture in the Ordinance. As the court observed with respect to zoning matters in Sechrist v. Municipal Court, supra, 64 Cal.App.3d at p. 746, 134 Cal.Rptr. 733, "[t]he term 'residential' is normally used in contradistinction to 'commercial' or 'business.' " (See also City of Beverly Hills v. Brady (1950) 34 Cal.2d 854, 856, 215 P.2d 460 ["Whether the questioned activities amount to the conduct of a business depends upon the adopted definition of that word and the primary intent of the zoning restrictions."].) Plaintiffs complain that Carmel's use of the word "commercial" in Ordinance No. 89-17 is "selfserving, unrealistic, and legally incorrect." To the contrary, we view Carmel's repeated use of the word as strong evidence that Carmel intends only to prevent homeowners in the R-1 District from operating like a "bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging...." In our experience, such establishments do not normally engage in house-swaps, house-sitting, pet-sitting, or permit customers to pay by treating the proprietor to dinner or by doing yard work. Given the repeated use of the word "commercial," we do not discern an intention by Carmel to police bread-and-butter gifts. We believe that Ordinance No. 89-17 is sufficiently clear to allow people

Finally, we turn to plaintiffs' contention that Ordinance No. 89-17 violates their constitutional rights of substantive due process and equal protection. They argue first that the Ordinance infringes upon their rights of freedom of association and of privacy guaranteed by the federal and state Constitutions. (See <u>U.S. Const.</u> 1st, 3d, 4th, 5th, & 9th Amends.; Griswold v. Connecticut (1965) 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; Cal. *1596 Const., art. <u>J. § 1; White v. Davis (1975) 13 Cal.3d 757, 120 Cal.Rptr. 94, 533 P.2d 222.)</u> Because these are fundamental rights (see Griswold v. Conoecticut, supra, 381 U.S. at pp. 484-486, 85 S.Ct. at pp. 1681-1683 [privacy]; N.A.A.C.P. v. Alabama (1958) 357 U.S. 449, 460-461, 78 S.Ct. 1163, 1170-1171, 2 L.Ed.2d 1488 [association]), they contend the Ordinance is not presumed val**392 id, as would be the normal zoning ordinance. Rather, they maintain that Carmel has the burden of demonstrating that the infringement upon constitutional rights is necessary to meet a compelling public need and that the Ordinance is the least intrusive means of meeting that need. (See Moore v. East Cleveland (1927) 431 U.S. 494, 499, 97 S.Ct. 1932, 1935, 52 L.Ed.2d 531; Robbins v. Superior Court (1985) 38 Cal.3d 199, 213, 211 Cal.Rptr. 398, 695 P.2d 695.)
Second, plaintiffs argue that even if the Ordinance does not infringe upon fundamental rights, it still violates substantive due process and equal protection because it is not rationally related to the goals sought to be achieved. (See Village of Belle Terre v. Boraas, supra, 416 U.S. at p. 8, 94 S.Ct. at p.

of common intelligence to understand its meaning.

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1540; Roman Cath. etc. Corp. v. City of Piedmont (1955) 45 Cal.2d 325, 331, 289 P.2d 438,) We have already determined that the Ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal. We have also concluded there is a rational basis for the 30-day cutoff and for the allowance of home occupations in the R-1 District despite the prohibitions contained in Ordinance No. 89-17. Plaintiffs rely upon Roman Cath. etc. Corp. v. City of Piedmont, in which the California Supreme Court struck down an ordinance prohibiting private schools in an area where public schools were allowed, finding no rational basis for distinguishing one from the other. The case is inapposite, Carmel has not prohibited one kind of transient commercial use while permitting another comparable use. Rather, through ordinance No. 89-17, Carmel has prohibited all transient commercial use of residential property for remuneration. Further, a review of a few of the cases relied upon by plaintiffs shows that this case is not within the ambit of association or privacy rights. Plaintiffs rely particularly upon City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, 164 Cal.Rptr. 539, 610 P.2d 436, in which the California Suprame Court struck down an ordinance prohibiting housekeeping units of more than five persons unrelated by blood, marriage, or adoption. The court concluded that there was no nexus between the "rule-offive" and the city's goal of maintaining residential character. " 'The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the *1597 accomplishment of the end sought to be achieved.... As long as a group bears the "generic character of a family unit as a relatively permanent household," it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors.' " (Id. at p. 134, 164 Cal.Rptr. 539, 610 P.2d 436, quoting from State v. Baker (1979) 81 N.J. 99, 405 A.2d 368, 371-372.) In Bobbins v. Superior Court, the California Supreme Court concluded that plaintiffs were likely to succeed on their claim that certain aspects of the defendant county's general assistance program were unconstitutional. Under the program, single, employable residents were not eligible for cash benefits but only for "in-kind" benefits, meaning food and shelter at a county facility. Because the assistance program likely interfered with plaintiffs' rights of association and privacy, the court held that the trial court erred in refusing to issue a preliminary injunction. In Park Rediands Covenant Control Committee v. Simon (1985) 181 Cal. App. 3d 87, 226 Cal. Rptr. 199, the court declared unconstitutional a private restrictive covenant that limited the maximum number of occupants per unit to three. In Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89, 130 Cal.Rptr. 375, the court declared unconstitutional a county housing authority policy prohibiting a law income public housing tenant from living with a member of the opposite sex to whom the tenant was not related by blood, marriage, or adoption. In each case, the court determined that the rule interfered with **393 the complainants' right to privacy by restricting with whom they could live. In Moore v. East Cleveland, the United States Supreme Court struck down an ordinance limiting the occupancy of a single dwelling unit to members of a single "family" and defining "family" so as to prohibit even related individuals from living together in certain instances. When the government so intrudes upon family living arrangements, the Court declared, "the usual judicial deference to the legislature is Inappropriate." (Moore v. East Cleveland, supra, 431 U.S. at p. 499, 97 S.Ct. at p. 1935.) The Court distinguished the case from Village of Belle Terre v. Boraas, in which the Court upheld an ordinance that limited the ability of unrelated individuals to live together but placed no limitation upon those related by blood, marriage, or adoption. The Court noted that the Belle Terre ordinance promoted "family needs" and "family values." (Village of Belle Terre v. Boraas, supra, 416 U.S. at p. 9, 94 S.Ct. at p. 1541.) Achieving Just the opposite, the East Cleveland ordinance "slic[ed] deeply into the family itself." (Moore v. East Cleveland, supra, 431 U.S. at p. 498, 97 S.Ct. at p. Ordinance No. 89-17 differs sharply from the ordinances, policies, and covenants declared unconstitutional in the cases cited by plaintiffs. The rule *1598 challenged in each of those cases prohibited cohabitation by certain people or groups of people. In effect, each rule governed with whom residents could reside, based upon the number of people or upon their familial relationship.

The Ordinance here does no such thing. Plaintiffs are free to live with whom they wish. They may entertain whom they wish. They may rent to whom they wish--the only condition being that the occupancy, possession, or tenancy last at least 30 consecutive calendar days. As the Supreme Court emphasized in City of Santa Barbara v. Adamson, supra, 27 Cal. 3d at p. 133, 164 Cal. Rptr. 539, 610 P. 2d 436, "In general, zoning ordinances are much less suspect when they focus on the use than

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when they command inquiry into who are the users." The Ordinance here does just that. It prohibits the transient commercial use of residential property for remuneration in the R-1 District-- regardless of who the parties are. Because Ordinance No. 89-17 focuses on use, rather than users, it does not violate fundamental rights and does not warrant stricter scrutiny than is normally accorded zoning laws.

Even if their privacy rights are not violated by Ordinance No. 89-17 itself, plaintiffs fear the means by which Carmel will detect violations of the Ordinance. Plaintiffs allege that Carmel attempted to enforce earlier versions of the Ordinance by monitoring houses and license plate numbers and by dispatching letters and police officers to the homes of suspected violators. Plaintiffs contend such methods would violate their right to privacy. Just as we do not presume to know precisely how Carmel will interpret Ordinance No. 89- 17, we also do not presume to know precisely how Carmel will detect violators. But we shall not assume that Carmel intends to invade constitutional rights. Review detect violators. But we shall not assume that Carmel intends to invade constitutional rights. Review of Carmel's specific application and enforcement of the Ordinance, if appropriate, must await another day. (See Euclid v. Ambler Co., supra, 272 U.S. at pp. 395-397, 47 S.Ct. at 121-122; People v. Wingo (1975) 14 Cal.3d 169, 180, 121 Cal.Rptr. 97, 534 P.2d 1001 ["A statute valid on its face may be unconstitutionally applied."].)

Because we conclude that Carmel has not violated plaintiffs' constitutional rights, we do not reach their arguments under 42 U.S.C. 55 1983 and 1988.

DISPOSITION

The judgment is affirmed.

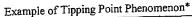
CAPACCIOLI, Acting P.J., and COTTLE, J., concur. Cal.App. 6 Dist., 1991. Ewing v. City of Carmel-By-the Sea 234 Cal.App.3d 1579, 286 Cal.Rptr. 382 END OF DOCUMENT

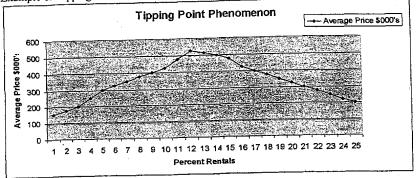
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Tipping Point Analysis Dr. James Nicholas

Referenced in the Ewing v. Carmel-by-the-Sea

Dr. James Nicholas, Professor of Urban & Regional Planning & Affiliate Professor of Law, University of Florida (appendix F) is an expert with over 30 years of experience in land use issues. Dr. Nicholas has conducted extensive research on the impact of short term rentals on residential properties. His "tipping point" phenomenon has been used by other cities in their analysis of this issue. Dr. Nicholas' research shows that property values increase as the percentage of short-term rentals in an area increase, but once the percentage of short-term rentals reaches 12% (the "tipping point") overall property values start to decrease.





*This chart is an example and prices do not reflect actual Solana Beach property values.

Dr. Nicholas explains, "Other resort communities have found that in the short run the value of properties rented on a short-term basis will increase based on the properties' ability to generate income. Also over the short-term, permanent residential properties adjacent to short-term rentals tend to have declining rates of growth in property value due to the off-site impacts of short-term rentals and their inherent incompatibility with permanent resident uses. However, as the number of short-term rentals properties increases in proportion to total units, all property values may decline as the area converts to more high-intensity and commercial uses, effectively displacing desirable residential opportunities in the market."

In Dr. Nicholas' research, he has found that short-term rentals over-utilize infrastructure and the ecosystem. Over-utilization will negatively impact the community and property values. He feels that it is important to maintain a stable balance between resort and residential zones. When the tipping point is reached (12%), it may be too late to preserve, or very costly to restore, the residential community.

In a letter dated April 29, 2002 to Celia Brewer from Jim Newcomb at Dave Stubbs Real Estate, they estimate that 20% of all units along the "bluff" are rented out as Vacation

⁴ "Short-Term Rentals in Kiawah", David Warner, Council Member, Kiawah, South Carolina, April 2002. pg. 37.

Royal Motel 1488 N. Hwy 101 Encinitas, Ca, 92024 619 504-4569



Oct/20/2006

California Coastal Commission Att; Gary Cannon 7575 Metropolitan Drive, Suite103 San Diego, Ca 92108-4402

Re; Encinitas LCP Amendment No 1-06 Vacation Rentals

Dear California Commissioner:

This letter is to express our support for the City of Encinitas' request to amend their local Coastal program to prohibit short-term vacation rentals in residential zones.

As a hotel operator within the city, we were very concerned with the unfair competition of lodging within residential zones. We understand the need to have visitor-serving commercial uses within the city, but strongly believe such uses should be in commercial zones. Our investments in the lodging industry are substantial and continuing to allow the proliferation of lodging in residential neighbors undermines that investment.

We hope that you agree with the city's request to prohibit shortterm rentals in residential zones.

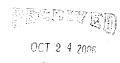
Royal Motek

EXHIBIT NO. 7

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
Letters of Support
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California Coastal Commission

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October 20, 2006

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinances #2005-06, 2005-09

Dear Mr. Cannon:

I am signing this letter as a supporter of ENCIT- Encinitas Citizens for Residential Stability, and I support the Encinitas City Council's Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. This new ordinance prohibits future short-term rentals of less then 30 days in all residential areas of Encinitas.

Please note the following:

- Properties that have been or currently are being rented on a short-term basis are
 allowed to continue such rentals provided they register with the City and follow the
 regulations governing the behavior of renters. Their right to rent would be
 "grandfathered", and which rights would be transferred with the land. In essence,
 there would be little or no diminution of visitor access. These "grandfathered" units
 will continue to supply the needs of rental families for the foreseeable future.
- The City and the neighboring cities have ample areas designated for commercial use. Numerous motels and hotels are located in the zone extending along Highway 101 from the northern border of Encinitas to the old downtown area. They have a high vacancy rate –even in the summer. Many of these motels have cooking facilities for visitors and are located a few short blocks from the beaches.

Therefore, the Council by this compromise has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to a residential neighborhood environment. At the same time the Council through its "grandfathering" and its extensive commercially zoned areas has assured continued access to the beach for the public. Thus, the City of Encinitas has met the needs of visitors who want to use our beaches and I respectfully urge your support of this statute.

Singerely,

My address:

1825 WILTON RD

ENCINITAS, CALIF 92024

Letters of Support

(The Commission has received 177 Copies of this letter signed by individuals)

OCT. 22, 2006

California Chastal Commission
OCT 2 4 2006
Otts: Dary Cannon
7575 metrapolitan Drise Suite 10 3
San Diego, CA. 92108-4402

Dear California Coastal Commissione

The letter is to of press our support for the city of Encisites request to aread their Local coastal Program to prohibit their Local coastal program to prohibit their theaties without in vidential zone.

MOTEL VILLA MAR,
100 SO. COAST HIGH WAY 93034
LINEAS REQUIRED LANGUAGE
Julia S. Quintanilla



California Coastal Commission Attn: Gary Cannon 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108-4402

Oct, 21, 2006

RE: Encinitas LCP Amendment No 1-06 Vacation Rentals

Dear California Coastal Commissioner:

This letter is to express our support for the City of Encinitas' request to amend their Local Coastal Program to prohibit short-term vacation rentals in residential zones.

As an operator of a Bed and Breakfast facility within the City, we are very concerned with the unfair competition occurring in residential zones. We understand the need to have visitor-serving commercial uses within the City, but strongly believe such uses should be in commercial zones or authorized in a residential zone as a Bed and Breakfast facility. Our investment in our Bed and Breakfast is substantial and continuing to allow the proliferation of short-term rentals in residential neighbors undermines our investment.

The City requires an extensive application and public review process to allow a Bed and Breakfast use in a residential zone. A Bed and Breakfast use requires on-site management 24-hours a day and adequate on-site parking.

We hope that you agree with the City's request to prohibit short-term rentals in residential zones.

Kirsten Richter owner

Bed and Breakfast name

OCT 2 3 2006

Irwin Rubenstein 1838 Parliament Rd. Leucadia, CA 92024-1030 760-942-9432

October 16, 2006

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

The Encinitas City Council has enacted Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. This item is scheduled to appear on your November California Coastal Commission Agenda.

This new ordinance prohibits future short-term rentals of less then 30 days in all residential areas of Encinitas. Properties that have been or currently are being rented on a short-term basis are allowed to continue such rentals provided they register with the City and follow the regulations governing the behavior of renters. This new ordinance was the result of 15 months of discussion and compromise; at least 5 public meetings of the Council and a Council sub-committee were held. This ordinance is a partial return to the status quo that existed in Encinitas in 1997.

A little history is in order. Prior to 1997, short-term residential ("transient") rentals was prohibited in all residential areas of Encinitas. While a few rentals of less then 30 days probably occurred illegally, most rentals in residential areas were for 30 days or longer.

At a meeting of the Encinitas Planning Commission in 1997, which had little public attention, the Commission proposed a change in the City's zoning ordinance that had the effect of allowing single family homes and duplexes in residential areas to rent their property for any period of time -- even as short as one day. Shortly thereafter, this recommendation of the Planning Council was adopted by the Encinitas Council -- again with little or no public discussion. Many of us only learned of these decision years later when inquires were made to the City.

Why is a new ordinance necessary at this time? Realtors and developers have begun to exploit, in an ever increasing fashion, the zoning changes made in 1997. They use the Internet to market worldwide the short-term rentals of Encinitas homes. One has only to

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look at the Internet to see how large these commercial operations have become and their potential for future growth. See www.beachfrontonly.com or www.seabluff.com. Many of us in Encinitas that live in residential areas have seen our neighbor's home sold and turned into motel-like operations. The new owner remodels the home to contain the maximum number of people possible and then rents the property to the maximum number of people possible for periods of a week or even as short as one day. They are also advertising these units as places to hold weddings and conferences. As stated on the web site www.beachfrontonly.com:

"Our luxury beach front properties provide the perfect venue for your event! If you have dreamed of a wedding on the beach, let us make your dream come true! Our gorgeous beach front properties sit directly on the sand and are perfect for all things wedding...bachelorette parties, rehearsal dinners, wedding ceremonies, receptions, out-of-town guest accommodations and wedding party accommodations!

Our properties can accommodate 50-200 guests for your wedding as well as sleep up to 60 guests!

If this is not a commercial enterprise, I don't know what is. But it sure isn't a "residential property" as per local zoning in Encinitas.

I first call to your attention that the Encinitas City Council in drafting this Statute specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use.' Specifically, their rights to rent would be grandfathered, and which rights would be transferred with the land. In essence, therefore, there would be little or no diminution of visitor access. These "grandfathered" units will continue to supply the needs of rental families for the foreseeable future.

I next want to note that the City has ample areas designated for commercial use. Numerous motels and hotels are located in the zone extending along Highway 101 from the northern boarder of Encinitas to the old downtown area. These facilities for visitors are located a few short blocks from the beaches. Almost all of these units contain cooking facilities and have a high vacancy rate-even during the summer months. And more are planned. KSL Development has received California Coastal Commission approval to build and operate a 126-room hotel at the end of La Costa Avenue. In addition, the City of Carlsbad plans to develop about 50 acres just north of Batiquitos Lagoon which is on the northern border of Encinitas. This development will include a hotel, time-shares and other commercial usages. It is located directly across Highway 101 from South Carlsbad State Beach Park.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitor-serving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor-serving commercial uses to "intrude into existing residential communities."

Once commercialization starts in a neighborhood and reaches the so called "tipping point", your property becomes unattractive to normal home owners. The only people who will buy your home are those that wish to use it as a rental property--thus "tipping" a residential area into commercial usage.

The Council has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use and its extensive commercially zoned areas has assured the public continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this statute. Thank you.

Sincerely,

Irwin Rubenstein

Econo Lodge 410 North Coast Hwy 101 Encinitas, CA 92024

October 15, 2006

California Coastal Commission Attn: Gary Cannon 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108-4402

Re: Encinitas LCP Amendment No 1-06 Vacation Rentals

Dear California Coastal Commissioner:

This letter is to express our support for the City of Encinitas' request to amend their Local Coastal Program to prohibit short- term vacation rentals in residential zones.

As a hotel operator within the city, we are very concerned with the unfair competition of lodging within residential zones. We understand the need to have visitor-serving commercial uses within the city, but strongly believe such uses should be in commercial zones. Our investments in the lodging industry are substantial and continuing to allow the proliferation of lodging in residential neighbors undermines that investment.

We hope that you agree with the City's request to prohibit short- term rentals in residential zones.

Sincerely,

Barry Patel (Manacan)

OCT 1 8 2000

October 24, 2006 California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue #103 San Diego, CA 92108-4402

Dear Mr. Cannon

I have lived in my neighborhood for 30 years. I currently live at 553 Neptune Avenue, I have lived in this home for 16 years. I live across the street from the beach and three blocks from the closest beach access. Things have changed in my neighborhood since the 70's. The most obvious being the influx of people into our small beach community. Anyway, let me get to the point. I live in a great neighborhood and the reason it is a great neighborhood is because of the neighbors and knowing who they are and establishing a good relationship with them over the years. I believe in the "good neighbor" policy and respecting my neighbor's privacy and right to a quiet space. You will never be able to establish a working relationship with a neighbor who you will never get to know because they are just there for a short period of time. I feel renting a house at a minimum 30 days makes the most sense, as the Encinitas City Ordinance once stated in the past. Also, I am a big fan of supporting the local hotels and motels in the area just blocks away. There are several available. I have a personal experience with a short-term rental. My neighbor thought he would cash in on the short-term rental moneymaking bandwagon. He rented his house out for two weeks while he vacationed in Hawaii. I was aghast when I walked out onto the street next to a palm tree that separates our property and found 28 cigarette butts. Some were still burning! This, just in the first two days of their Encinitas vacation. I have nothing against smokers. I do have a problem with smokers who throw cigarette butts in the street that end up on our beautiful beaches. So, I quietly swept them up and hoped that was going to be the end of that. To my surprise I came out the next day and there were a dozen more! I was mad. I waited outside to confront this stranger. I asked him to stop throwing his cigarette butts in the street, that he was polluting and it was a danger to not only our property but to the small children and walking dogs because so many were still smoldering. I added that we like to keep our neighborhood clean. I did the math, at the rate the short-term renter was tossing cigarette butts there would have been 196 butts at the end of his two-week vacation. I always wondered and still do, at what he thought was going to happened to all those cigarette butts! Were they magically going to disappear on there own?

He apologized and said that he too wouldn't want this "in his neighborhood"! Whatever. Because of this incident my neighbor doesn't rent his house out any longer. I am so grateful!

Thank you for listening and please no short-term rentals, Linda Salvati/553 Neptune Avenue, Encinitas, CA 92024

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California Coastal Commission 7575 Metropolitan Ave #103 San Diego, California 92108-4402 Attn: Mr. Gary Cannon

Dear Mr. Cannon,



My name is Linda Bourgo and I've been a resident/homeowner for the last 15 years in Leucadia, California. It's taken me quite a while to put this letter together, perhaps I thought it would never make a difference, but now I just wanted to let you know how I feel

Last Sunday in the Union Tribune there was an article about National City. It was about getting the neighborhoods together to socialize, get to know one another, have a bar-bque. That article brought all my feelings to the surface of what's been going on in my neighborhood for the last 5 ½ years. My home is in a residential neighborhood, but I cannot know my neighbors in the months of June, July, and August. One year there was about 3,500 (and this is no exaggeration) strangers in and out of my gated community. People were walking around in groups of 8 to 10 asking "Where is the Office?" "Do you know a good place for breakfast?" Does that sound like a residential atsmosphere to you? I'm sure you've probably received many letters regarding the short-term rentals. Please read mine and try to understand what this situation is really like. It's not about restricting the general public and tourists from being able to access our beautiful coastline. The incredible ocean belongs to all of us. There are motels all up and down the highway here in Leucadia and Encinitas. One gentleman stood up at the last city council meeting, and owner of one of our local motels, and said his vacancy rate was always high. He had plenty of rooms. This rental issue is not about beach access, or family, or anything remotely like that. It's about money, greed, and how much can be made. When this issue arose, someone was quoted saying "This is a real gold mine". New hotel/motel/condominium/vacation rentals are in the works as I write this letter. Rooms are available to access the beach. Family neighborhoods, residential areas need you to protect us. Don't we have a right to know our neighbors from day to day? Week to week? Things have changed in our country and being able to rely on who lives in the house next door to me is something I feel I shouldn't have to worry about and neither should anyone else in this situation, and there are so many of us out there.

You seem to have the power to put at least the skids on this issue and give us our life back. No CC&R's could ever have handled this, and then it went to the city. Finally, our own City saw what was happening and they believed everything to be true.

I just want to paint a picture for you what life is like on a Saturday in my neighborhood, then I won't continue on any more. At around 8:00 or 9:00, the maids come into the neighborhood, trucks and cars with all their supplies. All the giant SUV's, extra cars, vans, etc. who have come to rent for the week are packing up for their so called Checkout time. It's a madhouse, a real zoo. The trash truck comes on Saturday because extra pick-ups are necessary from the additional people. By the time the maids are finished

driving around to all the RENTAL houses, it's time for Check-in time around 4:00. Then the strangers come in droves. It's party time at the beach in our residential neighborhood, and believe me, these people want to get their money's worth.

That's my story, I'm so tired of all of this, but like anyone else, it's a situation that requires not giving up. Should we really have to live like this? I'd be happy to talk to you at any time. I will give you open and honest answers. Maybe's time to talk to someone like me.

I appreciate you taking the time to read this. As a matter of fact, I took the time to direct one of the members of the commission to the hotel site he was meeting a newspaper reporter at. He was lost in my neighborhood.

Very sincerely,

Linda Bourgo

1838 Milbank Rd. Leucadia, California

760-634-8082







CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

October 17, 2006

California Coastal Commission Attn: Gary Cannon 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108-4402

Re: Encinitas LCP Amendment No 1-06 Vacation Rentals

Dear California Coastal Commissioner,

This letter is to express our support for the City of Encinitas' request to amend their Local Coastal Program to prohibit short term vacation rentals in residential zones.

As a hotel operator within the City, we are very concerned with the unfair competition of lodging within residential zones. We understand the need to have visitor-serving commercial uses within the City, but strongly believe such uses should be in commercial zones. Our investments in the lodging industry are substantial and continuing to allow the proliferation of lodging in residential neighbors undermines that investment.

We hope that you agree with the City's request to prohibit short-term rentals in the residential zones.

Yours Sincerely,

Vik Ganatra Ocean Inn Hotel

1444 N. Coast Highway 101, Encinitas, California 92024 Phone (760) 436-1988 Fax (760) 436-3921 Web Site: www.oceaninnhotel.com Email: oceaninn@netscape.net

January 23, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue San Diego, CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

This letter is being written to support the ENCIT Citizens for Residential Stability, and the LCP Amendment No. 2-05 (Vacation Rentals). This new ordinance prohibits short-term rentals of less than 30 days in residential areas of Encinitas. Although this LCP amendment isn't strict enough and has allowed the grandfathering of current rentals, something I still feel is not right, at least it doesn't allow the problem to get worse.

I have only once, when I lived in Imperial Beach, ever had to call law enforcement to control a party near my house. I have worked hard to be able to afford a home in a more stable area, but since I moved into Encinitas a couple years ago I have had to call the Sheriff three or four times each summer. In the middle of the week we have to listen to drunk youth fighting, and cars' woofers booming and tires screeching until dawn. I don't call every time there is a party of course. However, too often all I have to do is let the sheriff hear the noise level from inside my own house, sometimes at 3 a.m.! The next day there is trash in the streets, and kids sleeping in their cars. The party hosts don't even live in the neighborhood. Often they are supporting a great deal of underage alcohol use and smoking of marijuana.

I am not a person who is easily upset, I am a musician that often plays in bands at parties, These parties have never been shut down by the police but they have never been at a short term rental property either. Most party hosts respect the rights of their neighbors to live in peace and quiet, especially on weeknights when most people are resting to go to work in the morning.

This has nothing to do with beach access; the beach is a couple blocks away. Don't let the greed of unscrupulous individuals reduce the quality of life that homeowners in residential areas have worked so hard for.

Sincerely,

Dr. Justin Cunningham

223 3rd St

Encinitas, CA 92024

Encinitas LCPA 1-06 Page 80

California Coastal Commission Attn: Mr Gary Cannon 1/24/06



Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon,

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I am writing you to personally express my distress over the gradual demise of my neighborhood resulting from the vacation rental proliferation we have been experiencing in the past several years.

I moved here in 1996 and zoning and regulations dictated no short-term rentals. Unfortunately in 1997, in a casual conversation between council members without any citizen input, the laws were changed. None of us knew any of this took place. It was only a gradual increase in vacation rentals that finally alerted us to the 1997 decision change when we researched the legality of this.

When we move into a neighborhood, it is a decision we make based on among other things, zoning and regulations. It is our safe place, our haven, in that we eventually come to know our surroundings, our neighbors, etc. and can know what to expect. It is very disturbing to feel like a stranger on your own street. I don't think I have to go any further on this point, as I'm sure you know what I mean.

Now, we have been engaged in a long battle, costing thousands of dollars, immense amount of our precious time and resources, all because of certain persons who have made a business in our residential neighborhoods. I just don't get it. I just don't get why we should have to bow down to the almighty dollar, because they might get financially wounded from this change in regulation. How about us who live here?

We are no longer even asking to rid ourselves of these. We are just asking that there be no more. Why is that so hard? What is so unreasonable about that?

Tourists who come to Encinitas come here for the experience of the little piece of Old Southern Californian Coastal Community that still exists here. That is the draw and will continue to be the draw that brings our legal businesses here financial prosperity, but only as long as we manage the growth and atmosphere. It is why our homes here are of such great desirability and value. It is part of the reason the California Coastal Commission was created.

Now, a few, who are not satisfied with the offer the city has made to allow them to continue their businesses in our residential areas, are throwing everything they can think of to threaten the City. I can only surmise that this is because they have future plans to expand their short-term rental businesses. What other conclusion can really be drawn? I can't think of any. The claim of diminishing public access to our beaches is really a stretch. Please take time to see through to the real motives of the opposition.

Thank you for your efforts in this matter.

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Mike Vos and Theresa Vos

1139 Neptune Ave Encinitas, CA 92024

COASTA CO PASSION SAN DIECO - LE DISTRICT

January 30, 2006

California Coastal Commission Att: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

We agree with the statements in the January 21st letter to you from ENCIT (Encinitas Citizens for Residential Stability) which you have recently received. We wish to address one additional point.

The criterion that is usually considered in defining adequate access to the beach seems to be availability of rental units in each town. There seem to us to be sufficient numbers of hotels, motels, bed-and-breakfasts available, as well as the many units that will be grandfathered by the proposed ordinance. In addition, a large increase in beach access (130 units per your December 27th letter) is planned just north of us by the KSL Encinitas Resort Co.

We had not considered this as part of our town supply, since we assumed that all of Encinitas was south of La Costa. However your letter gives the address of this planned development as 2100 North Highway 101, Leucadia, Encinitas. Thus a very significant number of new units is being planned in Encinitas. If the location is somehow not really Encinitas, it just points out how easily one town's supply of units can be considered available to the adjacent town.

We urgently need the relief (from the Summer chaos that we currently endure) that is promised by this ordinance and hope you will support it. We hope you will also consider the right of residents to enjoy their life at the beach.

Sincerely,

Anthony and Joan Lubowe In Long S. Lubowe Joan Klubone

Encinitas CA 92024

ENCIT Encinitas Citizens for Residential Stability P.O. Box 231909 Encinitas, CA 92023-1909

January 20, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

Ladies and Gentlemen of the Commission, ENCIT represents over 150 residents of Encinitas' coastal communities who support the Encinitas City Council's enactment of LCP Amendment #2-05 regulating short-term vacation rentals in our City.

We first call to your attention that the Encinitas City Council in drafting this Amendment, specifically stated that owners of rental properties who could provide evidence of past rentals would be covered under a 'legal nonconforming use'. Specifically, their rights to rent would be grandfathered and these rights could be transferred with the land.

In essence therefore, the incontrovertible result is that there would be little or no diminution of visitor beach access as a result of this action.

This Amendment is the result of over 15 months of fact-finding and deliberation. These included several public Council meetings, two major forums before a Subcommittee of the Council, as well as countless hours of personal meetings with each of the individual Council members by representatives of both sides of this

Dozens of Encinitas citizens have on each occasion during these public sessions, voiced their opinions of how the Council should rule in this matter. All were witness as the Council considered conflicting points of view so that they might arrive at a vision of how a great City should proceed equally for all of its citizens and the general public.

The beginnings of this Ordinance occurred when a number of us presented the City with considerable evidence that our quality of life, and that of our neighborhoods, was being severely threatened by ever-growing and formidable commercial weekend and weekly rental activities. We asked for some relief. The compromise contained in this Amendment is the result.

In its introduction to this Ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitor-serving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of (the excessive growth of) short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor-serving commercial uses to "intrude into existing residential communities."

Some have suggested that most of the problems stated could be controlled by regulations and increased police enforcement. The key, however, is the word "proliferation". What unfolded before the Council during the past year and a half was convincing evidence that through the use of internet advertising, the lure of financial gain, and the activities of professional management groups, these problems have been accelerating beyond control. Further, there is no end in sight. In fact, the percentage of such rentals in one residential community alone now exceeds 20%! The motel-like environment resulting from such accelerating growth is creating an unfair imposition on the property rights of the permanent residents of the community.

At the same time the Council, in recognizing "legal nonconforming use", acted in complete fairness by conferring grandfathering rights to those property owners who are able to demonstrate a proven record of past rentals.

It should be repeated in this regard that as a result of such 'grandfathering', present access to the beach will not change! Yet, our neighborhoods will have some chance of surviving. It is now clear that by these evenhanded actions, this Council is acting in good faith on behalf of all of its citizens and the general public.

Some may not be aware of a number of decisions made by the California Appellate Court in deciding for the City of Carmel and their relevant Ordinance in this regard.

In part the Court found that such indiscriminate short-term rentals are simply incompatible with the "essential character of a neighborhood and the stability of the community". Further, that the City has a legitimate governmental responsibility in maintaining the residential character of its neighborhoods.

In that spirit, the Council has insured that Encinitas residential communities will continue to flourish, and that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the

Council, through its recognition of a legal non-conforming use, has assured continued access to the beach for the general public. We believe these actions constitute a fair resolution of the problem, and respectfully request your support of this Amendment.

Thank you.

For ENCIT

Harry Fund	-Seabluffe	760-436-8958
Irwin Rubenstein	-Seabluffe	760-942-9432
Theresa Vos	-Neptune	760-436-4940
Franz Birkner	-Neptune	760-942-5100

The attached internet addresses are but a sample of websites advertising commercial rentals in Encinitas.

http://www.seabluff.com

http://www.beachfrontonly.com

JAN 2 7 2006 26 JAN 06 1203 NEPTUNE A MR GARY CANNON PEGERT THAT I CANNOT VOCUNTERR WITH THE BUCINITAS ORDINANCE THE POCUS OF THIS NOT TO PREVENT PROPIE FROM USING THE CALIFORNIA BRACHES RAUCOUS PARTIES WHEN PROPLE CONGREGATE LITTLE OR NO INVESTMENT IN THEIR community, YRARS OURRSHAS

THE MILITARY, I HARD A PROPERTY MANAGER TO COLLECT THE RENT . DESPITE THIS ARRANGEMENT SHE HAD UERY LIMITED LEGAL RIGHTS TO INSPRCT THE PROPERTY, INSTEAD OF THE 2 INDIVIDUALS ON THE RENTAL CONTRACT, THE POSTAL SERVICE IN PORMED ME THAT UP TO 7 ANDIVIDUACS WERE RECEIVING MAIL AT THIS ADDRESS, WHEN I RETURNED PROM OUTERSEAS NEIGHBORS THANKED ME FOR STOPPING THE RENTAL STATUS - THE PLACE WAS TRASHED - AND I CRARARD A VACUABUR LESSON/ 1- DO NOT RENT 2-18-YOUDO PROPERTY MANAGERS CANNOT CONTROL AMAGE & INASPROPRIATE USES OF RENTAL PROPERTY 3 - LET'S PACE IT - DO YOU WANT TO LIDE IN A COMMUNITY. WITH THE APOREMENTIONED PROBLEMS! January 20, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue #103 San Diego, CA 92108-4402

Dear Mr. Cannon

I have lived in my neighborhood for 30 years. I currently live at 553 Neptune Avenue, I have lived in this home for 16 years. I live across the street from the beach and three blocks from the closest beach access. Things have changed in my neighborhood since the 70's. The most obvious being the influx of people into our small beach community. Anyway, let me get to the point. I live in a great neighborhood and the reason it is a great neighborhood is because of the neighbors and knowing who they are and establishing a good relationship with them over the years. I believe in the "good neighbor" policy and respecting my neighbor's privacy and right to a quiet space. You will never be able to establish a working relationship with a neighbor who you will never get to know because they are just there for a short period of time. I feel renting a house at a minimum 30 days makes the most sense, as the Encinitas City Ordinance once stated in the past. Also, I am a big fan of supporting the local hotels and motels in the area just blocks away. There are several available. I have a personal experience with a short-term rental. My neighbor thought he would cash in on the short-term rental moneymaking bandwagon. He rented his house out for two weeks while he vacationed in Hawaii. I was aghast when I walked out onto the street next to a palm tree that separates our property and found 28 cigarette butts. Some were still burning! This, just in the first two days of their Encinitas vacation. I have nothing against smokers. I do have a problem with smokers that throw cigarette butts in the street and end up on our beautiful beaches. So, I quietly swept them up and hoped that was going to be the end of that. To my surprise I came out the next day and there were a dozen more! I was mad. I waited outside to confront this stranger. I asked him to stop throwing his cigarette butts in the street, that he was polluting and it was a danger to not only our property but to the small children and walking dogs because so many were still smoldering. I added that we like to keep our neighborhood clean. I did the math, at the rate the short-term renter was tossing cigarette butts there would have been 196 butts at the end of his two-week vacation. I always wondered and still do, at what he thought was going to happened to all those cigarette butts! He apologized and said that he too wouldn't want this "in his neighborhood"! I let that go and needless to say my/neighbor doesn'h rent his house out any longer. I am so grateful!

Thank you for listening and please no short-term rentals, Linda Salvati

553 Naphre are.

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January 30, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Ave, #103 San Diego, CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon,

I am writing this letter because I have just found out that Coastal Staff has recommended that the Commission reject the Encinitas ordinance prohibiting new short-term vacation rentals in residential neighborhoods. *This will be detrimental to our community.* I will not go into how bad a neighbor short-term vacation rentals are but I would not wish this on anybody. There is no peace and quiet when they are in full swing. This is my residence, I have lived in this neighborhood for 52 years, my entire life. It is only across Neptune Ave from the beach.

Most of the residents here in Encinitas realize that the beach is going to be more crowded each year and who can blame people for wanting to come to the beach. We have our streets packed all summer with cars from all over San Diego County, California and Arizona. But it is not right that these out of towner absentee landlords come in and ruin our residential neighborhoods. Having new tenants show up daily and weekly is not a residential neighborhood, it is a money making operation.

There are ample motels just a short walk from all the accesses in Encinitas. They are clean, have kitchenettes and additional bedrooms. They also have ample parking, which none of the vacation rentals do. It is not fair that short-term vacation rentals which are a commercial enterprise operating in a residential neighborhood get to compete with motels and hotels that are in a properly zoned area.

Just to get a permit to have a Bed and Breakfast at your residence requires a lengthy permit process notifying your neighbors, providing additional parking and a process for complaints. I have not heard of problems with B&B's in our area.

A little history about what led to the original approval of short-term rentals in Encinitas would show that it was approved by the planning commission in 1997 with no public input. It was snuck in without City Council approval. If the residents of Encinitas had known what a nightmare this would be, there is no way we would have let it happen. All we want is for it to go back to the way it was before '97 and then let them apply for changes to the zoning laws with proper public notification.

Lastly, let me say that the owners of these short-term vacation rentals are not nice people as they would have addressed our complaints in the past. They have flat out lied at times to get their way. They let the almighty dollar make their decisions. Calls to the management companies, usually at least one area code away, have little effect. The code enforcement officers at the City have numerous violations pending with the owners.

I am a supporter of the objectives of the California Coastal Commission, having voted for its enactment in 1972. Now I would like you to support us by approving this ordinance. We have put a lot of time and effort and compromise to get our neighborhood back.

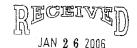
Sincerely,

Charles and Mary Moore 401 Neptune Ave Encinitas, Ca 92024

(760) 753-1405

Plane feel free to call with any questions

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CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

January 20, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

I am signing this letter as a supporter of ENCIT- Encinitas Citizens for Residential Stability, and I support LCP Amendment No. 2-05 (Vacation Rentals). This new ordinance prohibits short-term rentals of less then 30 days in all residential areas of Encinitas.

- After 15 months of fact-finding and deliberation the City Council decided that properties that have been or are currently being rented on a short-term basis will be allowed to continue such rentals provided they register with the City and follow regulations. Their right to rent would be "grandfathered", and these rights would be transferred with the land. In essence, there should be little or no diminution of visitor access. These "grandfathered" units and underutilized commercial rental properties near the beach will continue to supply the needs of rental families in Encinitas for the foreseeable future.
- The proliferation of short-term vacation rentals in residential areas of Encinitas through the use of internet advertising developed by professional management companies conflict with the residential character of our community. These conflicts include noise, parking, traffic congestion, late night disturbances, and excessive trash. The percentage of weekly rentals in one residential community alone now exceeds 20%! This frequent turnover of renters threatens to convert residential areas into commercial motel-like areas. For our own safety and peace of mind, we who live in residential areas need to know who our neighbors are.

The Council by this compromise has insured that the proliferation of short-term vacation rentals will stop and allow Encinitas's residents to continue to enjoy their rights to privacy and tranquility in a neighborhood environment. At the same time the Council through its "grandfathering" has assured continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this ordinance. Thank you.

this ordinance Thank you. We have would out unit in Scabliffe since 1973 and clarified to Sincerely. Fitter there, but the constant wrongs from the form the transfer would not be the same though we truly low address:

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January 24, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

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Sincerely. Anthony S. Lubour My address: 1824 Wilton Road Encinitar CA 92024 **%**ुर }

February 3, 2006

California Coastal Commission Attn: Mr Gary Cannon 7575 Metropolitan Avenue, #103 San Diego, CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vaction Rentals)

Dear Mr. Cannon

I live in a residential development, Seabluffe, along the coast in Encinitas. We would like you to preserve our development as a residential community. There are many, many older folks who have lived here for 20-30 years. They are elderly and need to be able to continue living in a safe residential community with neighbors they know care about them. My husband is disabled and it is important that he lives in a residential community where the neighbors know and care about him. I would never move him into a hotel setting in his best interest. Short term vacation rentals result in a hotel setting

On our boundary to the north, there is a site that will be developed into vacation rentals/hotel. On the north boundary of that site, we see the Carlsbad State Beach with day facilities. On the north boundary of that beach, we see the Carlsbad State Campground. This public beach access goes on and on as you proceed up the coast. Just to the south of our residential development, we see the Grandview public parking and public access stairs to the beach. On down the road we see Beacons and Stonesteps beaches with parking and public access. Then we see Moonlight beach and this public parking and extensive beach access. Beach access continues on down the coast to the south, including 171 spaces at San Elijo Campground..

In Encinitas, we have many, many hotels providing approximately 2672 rooms. Hotels west of HWY 101 or within 5 minute walk to the beach show: a 45.7% average vacancy rate for 2004-2005 fiscal year.

34.1 % vacancy for the July thru Sept season and 53% vacancy during the January thru March Season.

There are additional 138 rooms coming on-line in about 1-2 years.

Please, Please let us to keep our elderly folks, disabled folks and children in safe residential living communities. There are plenty of vacant rooms for vacationers to use when they visit the shore in our area. Our City Council is working to provide additional rooms along the coast as needs continue to grow.

Sincerely

FEB 0 6 2006

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DIT



February 2, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue #103 San Diego, CA 92108-4402

Re: Encinitas City Council LCP Amendment No. 2-05 (Vacation Rentals)

As a property owner in Leucadia we feel that legislation restricting rentals to 30 days or more, with the exception of the those reasons listed in the above Amendment, should be passed by the Coastal Commission,

The San Diego coastline is beautiful and should be available to all citizens. This is easily accomplished using the existing public beach areas already in place along the coast.

During the prime summer month rental season, it is nice to see the increased business in restaurants, stores and visitor areas. It brings needed income to the cities and businesses. However it also brings more traffic congestion to our streets, parking, public areas and beaches.

In our complex of about 270 units, the increase in trash by visitors overflows our trash bins (if the trash ever makes it to the bins), parking problems for both the visitors and residents (too many cars in too little space from multiple cars of visitors), beach trash litter, increased maintenance costs to our swimming pools, and late loud noise are some of the problems we face because of the short term renters in our quiet residential neighborhood.

The change from a nice pleasant residential complex that existed here is being challenged by the frequent turnover of the short term renter. It seems that each summer the clutter, noise, trash on the beach and general congestion increases more and more as additional short term rental units become available. This is not something that we look forward to.

Your consideration to pass this Amendment will help preserve the lovely coastal areas.

Thank you,

George and Linda Tyler 1807 Milbank Road

Leucadia, CA 92024-1029

+EB 0 6 5006 D) 随口電車 4 個別

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT July 29, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402



RE: Encinitas Regulation of Short-Term Vacation Rentals, Ordinances #2005-06, 2005-09

Dear Mr. Cannon:

I support the Encinitas City Council's Ordinances #2005-06, 2005-09 Elimination of Short Term Rental Homes. This new ordinance prohibits future short-term rentals of less than 30 days in all residential areas of Encinitas.

I have always been able to find vacation facilities for my friends and relatives in the nearby hotels, motels, timeshares and campgrounds. This area of the coast has plenty of facilities for vacationing families to enjoy the coast. Many of these facilities are just a few blocks from the beach. More commercial facilities for short term vacations are being planned in the immediate area in the near future.

Sincerely

Linda Howey 1757 Whitehall Rd

Encinitas, CA 92024

ENCIT Encinitas Citizens for Residential Stability P.O. Box 231909 Encinitas, CA 92023-1909

June 28, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals

Dear Mr. Cannon

Ladies and Gentlemen of the Commission, ENCIT represents over 150 residents of Encinitas who support the City Council's enactment of Statutes #2006, and #2009 regulating short-term vacation rentals in our City.

We first call to your attention that the Encinitas City Council in drafting these statutes specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use'. Specifically, their rights to rent would be grandfathered, and which rights could be transferred with the land. In essence therefore, there would be little or no diminution of visitor access as a result of this action.

These ordinances are the result of over 15 months of fact-finding and deliberation, including several public Council meetings, two major forums before the Council's Subcommittee, and countless hours of personal meetings with each of the individual Council members by representatives of both sides of this issue.

Dozens of Encinitas citizens have on each occasion during these public sessions, voiced their opinions of how the Council should rule in this matter. All were witness as the Council considered conflicting points of view so that they might arrive at a vision of how a great City should proceed equally for all of its citizens.

Central to the divisiveness between the parties in this debate was the divergent interpretation of 'property rights'. We think it is fair to say that what finally emerged is that there are property rights on both sides of the fence. For after all, each piece of property joined together becomes what is called a neighborhood. And each of the neighborhoods together becomes a City.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitorserving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitorserving commercial uses to "intrude into existing residential communities".

Some have suggested that most of the problems stated can be controlled by regulations and increased police enforcement. The key however is the word "proliferation". What unfolded before the Council during the past year and a half was convincing evidence that through the use of internet advertising, the lure of financial gain, and led by professional management groups, these problems have been propelling beyond control, and that there is no end in sight. In fact, the percentage of such rentals in one residential community alone is exceeding 20%! Further, that the motel-like environment resulting from such accelerating growth was creating an unfair imposition on the property rights of the permanent residents of the community.

At the same time the Council, in recognizing "legal nonconforming use", acted in complete fairness by conferring grandfathering rights to those property owners who will be able to demonstrate a proven record of substantial past rentals.

It should be noted in this regard that as a result of such 'grandfathering', present access to the beach will not change!

It is now clear that by these evenhanded actions, this Council is acting in good faith on behalf of all of its citizens. Some may not be aware of a number of decisions made by the California Appellate Court in deciding for the City of Carmel and their relevant statute in this regard.

In part the Court found that such indiscriminate short-term rentals are simply incompatible with the "essential character of a neighborhood and the stability of the community". Further, that the City had a legitimate governmental responsibility in maintaining the residential character of its neighborhoods.

Therefore the Council, because of its resoluteness has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use, has

assured continued access to the beach. We believe these actions constitute a fair resolution of the problem, and respectfully request your support of this statute.

Thank you.

For the Committee:

For ENCIT		
Harry Fund	-Seabluffe	760-436-8958
Irwin Rubenstein	-Seabluffe	760-942-9432
Theresa Vos	-Neptune	760-436-4940
Franz Birkner	-Neptune	760-942-5100

The attached internet addresses are but a sample of website advertising commercial rentals in Encinitas.

http://www.seabluff.com

http://www.beachfrontonly.com



July 25, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego, CA 92108-4402

Dear Mr. Cannon:

This letter is in regard to Encinitas City Council's Ordinances #2005-06, 2005-09 Elimination of Short Term Rental Homes.

I cannot tell you how much time, listening, and thought the Encinitas City Council has put into this issue of Short Term Rentals. The Council has shown consistent intelligence, patience, and understanding to both sides throughout this longtime debate. I have attended many of the Council meetings regarding this issue and I can tell you this has not been an easy situation for the City Council Members. They have been threatened, among other things, by lawsuits from those wanting to create a business atmosphere in our Encinitas residential neighborhoods with short-term rentals. This same group has subjected them to language that has been completely out-of-place and totally disrespectful.

We have an outstanding Encinitas City Council. I urge you to respect their knowledge and confer with the decisions that they have made.

Sincerely,

Out Allersere Jamethin

Janet M. L'Heureux-Barmettler

Property Owner 1809 Wilton Road Encinitas, CA 92024 RECEIVED June 13, 2005

Gary Cannon

California Coastal Commission
7575 Metropolitan ave. #103
San Diego CA 92108.4402

Dear MR. Cannen

I am writing to net you to vote IN FAVOR of the Ordinances 2005-06 and 2005-09 passed and to be passed ky the City of Encinities.

These Ordinands were passed to maintain the guality of life in our City. There will be a few who for moretary reasons will try to block these Ordinances.

Please listen to the City of Encionities, they are speaking Low the trajority.

Yoursetruly.

John Hicks 1872 Parliament Rd Encimitas, CA 92024 Irwin Rubenstein 1838 Parliament Rd. Leucadia, CA 92024-1030 760-942-9432

RECEIVED
AUG 3 0 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO GOAST DISTRICT

August 29, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

I spoke to you last week about a problem I have with the dates of the 2005 October meeting (Wednesday October 12, Thursday October13 and Friday October 14) in San Diego of the California Coastal Commission. I understand from Pat Murphy, Encinitas Planning, that the above issue on short-term rentals might be on the agenda of that meeting.

I mentioned to you that Thursday October 13 is the Jewish religious high holiday of Yom Kipper and that I would be unable to attend the hearings on that date. Since Yom Kipper starts Wednesday evening, I would appreciate it if you would schedule the Commission's discussion of "Encinitas Regulation of Short Term Vacation Rentals" for either Wednesday or Friday morning.

I have been heavily involved with this issue for almost two years and hope that I could be permitted to appear before the Commission. Thank you for your consideration.

Sincerely,

Irwin Rubenstein



Irwin Rubenstein 1838 Parliament Rd. Leucadia, CA 92024-1030 760-942-9432



July 19, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue. #103 San Diego CA 92108-4402

Subject: Encinius Regulation of Short-Term Vacation Rentals, Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

The Encinitas City Council recently enacted Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. You have or will shortly be receiving information on this ordinance from Mr. Pat Murphy, Director of Planning for the City of Encinitas.

This new ordinance prohibits future short-term rentals of less then 30 days in all residential areas of Encinitas. Properties that have been or currently are being rented on a short-term basis are allowed to continue such rentals provided they register with the City and follow the regulations governing the behavior of renters. This new ordinance was the result of 15 months of discussion and compromise; at least 5 public meetings of the Council and a Council sub-committee were held. This ordinance is a partial return to the *status quo* that existed in Encinitas in 1997.

A little history is in order. Prior to 1997, short-term residential ("transient") rentals was prohibited in all residential areas of Encinitas. While a few rentals of less then 30 days probably occurred illegally, most rentals in residential areas were for 30 days or longer.

At a meeting of the Encinitas Planning Commission in 1997, which had little public attention, the Commission proposed a change in the City's zoning ordinance that had the effect of allowing single family homes and duplexes in residential areas to rent their property for any period of time — even as short as one day. Shortly thereafter, this recommendation of the Planning Council was adopted by the Encinitas Council — again with little or no public discussion. Many of us only learned of these decision years later when inquires were made to the City.

Why is a new ordinance necessary at this time? Realtors and developers have begun to exploit, in an ever increasing fashion, the zoning changes made in 1997. They use the

Internet to market worldwide the short-term rentals of Encinitas homes. One has only to look at the Internet to see how large these commercial operations have become and their potential for future growth. See www.seabluff.com. Many of us in Encinitas that live in residential areas have seen our neighbor's home sold and turned into motel-like operations. The new owner remodels the home to contain the maximum number of people possible and then rents the property to the maximum number of people possible for periods of a week or even as short as one day.

I first call to your attention that the Encinitas City Council in drafting this Statute specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use.' Specifically, their rights to rent would be grandfathered, and which rights would be transferred with the land. In essence, therefore, there would be little or no diminution of visitor access. These "grandfathered" units will continue to supply the needs of rental families for the foreseeable future.

I next want to note that the City has ample areas designated for commercial use. Numerous motels and hotels are located in the zone extending along Highway 101 from the northern boarder of Encinitas to the old downtown area. These facilities for visitors are located a few short blocks from the beaches. And more are planned. KSL Development is to build and operate a 126-room hotel at the end of La Costa Avenue. The project on the Leucadia bluffs and directly on the beach was originally approved by the City of Encinitas and then the Coastal Commission approximately 7 years ago. In addition, the City of Carlsbad plans to develop about 50 acres just north of Batiquitos Lagoon which is on the northern border of Encinitas. This development will include a hotel, time-shares and other commercial usages. It is located directly across Highway 101 from South Carlsbad State Beach Park.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitorserving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitorserving commercial uses to "intrude into existing residential communities."

Once commercialization starts in a neighborhood and reaches the so called "tipping point", your property becomes unattractive to normal home owners. The only people who will buy your home are those that wish to use it as a rental property—thus "tipping" a residential area into commercial usage.

The Council has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use and its extensive commercially zoned areas has assured the public continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this statute. Thank you.

Sincerely.

Lown Rubenstein

7

Dietmar E. Rothe, Ph.D., M.A.Sc., P.Eng.

Research Scientist and Professional Engineer 1404 Rubenstein Avenue, Cardiff-by-the-Sea, CA 92007, U.S.A. Tel.: (760) 753-6827 Fax: (760) 753-2227 E-mail: rtr@sand.net

June 27, 2006

Ms. Sherilyn Sarb California Coastal Commission 7575 Metropolitan Dr., Ste 103 San Diego, CA 92108 JUN 2 8 2006

CALIFORNIA

COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Encinitas LCP Amendment No. 2-05 (City-wide Vacation Rental Ban)

Dear Mr. Cannon:

Enclosed is a copy of a newspaper article reporting on the June 14 City Council Meeting, at which all five councilpersons voted to bring the short term rental ban back before you. As you will read, the mayor and two other council members were quite rabid about it. You will probably have a chuckle about the language used by our Mayor Guerin and Councilmen Dalager and Bond. Also attached are excerpts taken from a DVD recording (available at the Encinitas city offices) that put these rants and insults in a wider context, so you can get a better flavor of where each council person stands on the issue.

Nothing has really changed since last October, except for a few more restrictions in the proposed city regulations for existing vacation rentals. As before, I and many thousands of home owners still strongly oppose the City Council's selective ban for the benefit of protecting the short-term rental market for a chosen few commercial "patrons."

Note that Councilman Dan Dalager correctly states that "we got a couple 3% that are causing 98% of the problem that we see." The same small group of residents, associated with Mr. Marvin from Neptune Ave, are the only complainers about vacation rentals. Elsewhere in the city, two other residents came forward who complained about large numbers of undocumented seasonal workers renting homes next door to them and creating a nuisance. This has really nothing to do with the issue at hand, but council used these unrelated incidences to proclaim that we must not let this short-term rental "cancer" spread throughout the city.

Retired attorney Charley Marvin, who is the impetus toward prohibition of new short term rentals, has now publicly admitted that he owns a 21-room Inn in Leucadia and that it is all about eliminating competition with his commercial ventures.

Emboldened by Mayor Guerin's recent success at the Coastal Commission hearing in Monterey, where she persuaded one more Commissioner to vote against the Coastal Commission's staff recommendation, she is now spearheading the fight against you. She wants to hire a bus to lobby the Coastal Commission, bringing all council members and attorney Marvin with his neighbors along to "raise hell."

EXHIBIT NO. 8

APPLICATION NO.
Encinitas LCPA
#1-06
Short-term Rentals
Letters of Objection
Page 1 of 58

At other occasions, several council members have expressed their desire to see the Coastal Commission abolished. I urge you not to take any of the council's, and their lobbyist's, arguments too serious, and I ask you to turn down the proposed rental ban again. Specifically, don't attach too much credulity to their claim that we have a 35% vacancy rate for visitor accommodations in the summer. I did my own survey and found that the hotel vacancy in beach areas is practically zero on summer weekends, when most visitors want to come to this area (see Page 5).

As in my previous communication, my reasons for opposing the ban on new short term "home" rentals (the council now wants to enlarge the ban beyond just "vacation" rentals) are still the same:

- 1. The city-wide rental ban overturns a March 3, 2005 finding by the planning commission that "such a prohibition was inappropriate as a matter of zoning law."
- 2. Unless you approve the ban, it violates present Municipal Code zoning laws, which permits such rentals.
- 3. The city-wide ban on short-term rentals was the council's response to an unverified (no police records) complaint against raucous behavior of a few short-term tenants on Neptune Avenue.
- 4. The city-wide ban on <u>new</u> short-term rentals does not correct the alleged problem, as it lets the existing short-term rental operations continue unabated.
- The city-wide rental ban unjustly punishes retirees who want to rent out a room for extra income.
- 6. The revenue-hungry council and the Inn owner, Charles Marvin, favor the ban because it protects the hotel and time-share condo market (e.g. the \$400 \$600 per night rooms of the newly approved new KSL Boutique Resort in Leucadia) and thus encourages more such commercial time-share development.

I hope this letter and the enclosed material gives you an alternative viewpoint from the public's side, so that you need not rely on the "smoke and mirror" arguments from council and their lobbyists.

Sincerely,

Dietmar Rothe Concerned Citizen

Cardiff

cc: Ms. Gary Cannon

Ms. Deborah Lee

Mr. Lee McEachern

encl:

Excerpts from June 14 Council Meeting

Letters

Newspaper articles

CITY COUNCIL MEETING, JUNE 14, 2006 EXCERPTS FROM TAPED VIDEO RECORDING AIRED ON COX LOCAL NETWORK CHANNEL, JUNE 15, 2006

ENCINITAS - SHORT TERM VACATION RENTAL BAN

Mayor Christy Guerin (Excerpts from her 20-minute tirade):

She supports rental ban with a passion.

"... I am absolutely adamant about going back to the Coastal Commission. ... And I am absolutely angered and appalled that the Coastal Commission thinks that they even have a right to hear this. Quite frankly, I don't think it's any of their damn business for how we deal with land use in residential neighborhoods. It makes me furious that they think they can step in to deal with it, or say that they can have any dealings with it. ...

"Theirs is to ensure public access to the beach. We have plenty of public access. Theirs' to ensure that the public can stay places near the beach together. And we did the study to see what the vacancy rate is, and it is high. Charley [Marvin, Attorney] said he is an owner, and we checked with all the owners. We have hotel rooms available all the time. And on top of it, we have 100 more coming. ...

- "... it's wrong. They should not have the right to tell us how our residential neighborhood should look and feel.
- "... I want to go to the Coastal Commission in a bus, and I want all these people with us, and I want to fight them tooth and nail, because this is wrong. They have no say in it, and they're way off base trying to do it. ..."

Councilman Dan Dalager:

He wants short term vacation renters to pay TOT taxes because they are unfair competition with hotels. He says, "we got a couple 3% that are causing 98% of the problem that we see," yet he supports prohibition of new short term rentals.

"... I am willing to fight to see who is in charge here. That's basically how I feel about the Coastal Commission. ... not to have a bunch of elitist nuts out of Sacramento telling us who can live in our neighborhoods and how we can live. I'm behind that fight, too."

Councilman Jim Bond:

He supports ban on new short term rentals.

"... The Coastal Commission has somehow wrestled away the zoning. They're kinda becoming the de facto zoning authority for the city. ... There's a lot of contradiction in what comes from the Coastal Commission, and certainly they have overstepped their bounds in a number of areas. So, I'm all for fixing it right [for] once, and that would appear to be to go back to the Coastal Commission. ...

"And we can go down there and, excuse my French, just raise hell. ... We need to have a showing of folks that are real serious about this and [have] an honest understanding of the real problems that it's created. ..."

Councilman Jerome Stocks:

He is against commercial ventures in residential neighborhoods, because they compete unfairly with hotels. He also supports prohibition on new short term rentals.

Councilwoman Maggie Houlihan:

She claims Encinitas has a "35% vacancy rate in the summer." She feels vacation rentals are unfair competition for regulated hotels. She supports regulation of existing short term rentals and prohibition of new ones.

Charley Marvin (200 Neptune)

Charley Marvin is the "hired gun" attorney (now retired) for developers and very cozy with City Council. He still has an enormous clout with the Council in getting whatever he wants. He owns Leucadia Beach Inn on Hwy 101 with 21 units and a home on Neptune.

"The [proposed] Regulations are bad language planning and are discriminatory because I can't compete. I own an Inn."

[Now the cat's out of the bag. The rental ban is all about eliminating competition for the new Boutique Hotel planned on Hwy 101 and for Marvin's Leucadia Beach Inn]

"Stick to your guns. Don't let the Coastal Commission staff force you to have uncontrolled zoning in the city. Don't let the Coastal Commission staff dictate that people can have rental units, basically motel operations, anywhere they want in the city. Go back to the Coastal Commission."

THE 35% HOTEL VACANCY FARCE

Encinitas Mayor Guerin, Councilman Dalager and retired Attorney Marvin (who just reopened his Leucadia Beach Inn on Hwy 101 this spring after extensive renovations) all claim they did the study and found that in Encinitas we have plenty of visitor serving accommodations and that "hotel vacancy rates are 35% in the summer and higher in the winter."

This is at best a half-truth, knowingly told to deceive. I knew that this was an exaggeration and did my own survey. When I spoke with former Mayor Sheila Cameron, who lived in Leucadia for more than 20 years, she confirmed that during the summer months all reasonably priced, decent hotels, motels, inns, B&Bs fill up, and have been filling up for as long as she can remember.

On late afternoon of Saturday, June 24, I made the rounds in the Encinitas beach areas to check availability of hotel rooms. It confirmed my suspicions that, at least on summer weekends, the hotels in the beach areas are filled up, and that even on weekdays the stated 35% vacancy rate is unjustifiably high.

Along Hwy 101 in Leucadia, most of the motels and inns had NO VACANCY, the remaining ones had at most only one or two rooms left and expected to have those filled by nightfall. The situation was the same in Old Encinitas and Cardiff.

Hotels with zero vacancy were:
Royal Motor Inn, Hwy 101, Leucadia
Pacific Surf Inn, Hwy 101, Leucadia
Portofino Beach Inn, Hwy 101, Leucadia
B&B Seabreeze Inn, Vulcan Ave, Encinitas
Motel Villa Mar, Hwy 101, Encinitas
Moonlight Beach Motel, 2nd St, Encinitas
Comfort Inn, Villa Cardiff Dr, Cardiff
Cardiff-by-the-Sea Lodge B&B, Chesterfield Dr, Cardiff
Best Western Hotel, Encinitas Blvd, Encinitas

The Best Western has 90 rooms going for an average of \$150 per night. The receptionist in the lobby told me that during weekends and holidays in June, July, August and September they are completely filled up. During weekdays they have the hotel about 80% filled.

I saw no vacancy signs on Neptune Ave in Leucadia. The B&Bs and vacation home rentals on Neptune are filled up with regular repeat tenants. These places do not even bother to advertise any more on the internet or in newspapers.

So, at least on summer weekends and holidays, the 35% vacancy rate is a "convenient untruth."

And as for the new 100 units being built at the KSL Leucadia "Boutique Hotel," these will rent for \$400 to \$600 per night, according to KSL officials. This compares with an average of \$800 per week, or \$114 per night for short term vacation rentals. So, the planned boutique hotel in Leucadia will not ease the shortage of affordable accommodations for beach visitors.

VOL. 20, NO. 24

MAKING WAVES IN YOUR NEIGHBORHOOD

says you can't fight city hall. But it what happens when city hall what happens when city hall decides to fight Sacramento?

The five members of the Encintras City Council are hoping they can get an milkely supset when they go for a third round against the California round against the California Coastal Commission, attempting to ban homeowners from renting their homes to vacationers.

At its June 14 meeting, the council voted unanimously to take the matter back to the council work had constal Commission — it has twice had the ban before the commission only to withdraw it for lack of support — while moving ahead with regulations on a shear which was a councilman Dan Dalager Councilman Dan Dalager compared the sparting between the city and the commission to a fight between cowboys on the

because it would limit the amount of lodging for vacation-

the "Quite frankly, I don't think few negligent owners have rest the its any of their damp business." unfairly tarred the majority of for low-said Mayor Christy Guerin. She, them.

on along with the other council members, said they felt such empirical evidence as to the members, said they felt such empirical evidence as to the ger land-use measures should be up number of complaints relating to en to the City Council.

Dalager said he worked as a bort-term rentals.

Dalager said he worked as a college student to help pass the neighbors are," said Zee legislation which created the Machado, a Leucadia resident

want to party.

Those who oppose the ban and rent their homes say that a few negligent owners have

Encinitas council goes against Coastal (

At this point, Dalager said commission, but he believes it who lives near a home being for stream renals.

It hall is in charge: the City Council or in bord it is bound of elitist nuts out of the Coastal Commission is not addition. The commission itself has more forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the council refined a set of said to move forward with the ban, and the said to move a staff recomplanted regulations that would put the council refined a set of said to move them neighborhoods by the council refined a set of said to move them neighborhoods by the one as wacation rentals.

It is fall the coastal Commission is mendation, Encinitas has pre- permits in order to rent their city is staff has maintained the compared the practice to a can pended if the homewomer fails to said the proper cert that is infesting the city, comply with the regulations, provided the matter from the proper cert their council the matter from the proper cert their city of the home, with a maximum of two tenants per bed-take the council refined as the council

a Failing to comply with the restrictions would trugger a set of of fines ranging from \$250 to \$2,500. Homeowners said they supported regulations and are willing to work with the city.

"I believe the staff and council have done a pretty good job,"

said Jared Ficker, a representative

CONTINUED FROM #1

for several homeowners who rent their homes.

Many opponents, however, if said they felt the regulations d put too much emphasis on n neighbors having to call the city to file complaints.

"I don't want to be a code enforcement officer," Machado

Other regulations include providing on-site parking and keeping signs posted with contact information. The council is set to take a first vote on the final regu-

lations at its June 28 meeting.

In other business, the council unanimously decided to file a legal notice that it intends to sell bonds worth up to \$23.5 million. That money would be used to help cover a projected shortfall in its future construction budgets.

Several citizens asked the city hold a public vote before borrowing that much money.

LETTERS TO THE EDITOR

Should work together

We were disappointed by the hostile artitude Mayor Christy Guerin took toward the California Coastal Commission at Wednesday's City availability for the general public council meeting when discussing the previously withdrawn ban on new short-term rentals in Encinitas. Guerin seems empowered by her commendation when the Coastal Commission voted against tis own believe that Guerin should have gone of the new horiel planned in Leucadia to time-share units which go against the grain of most critizens. Councilments which go against the grain of most critizens. Councilments of most critizens. Councilments of most critizens comprised of accantento "Commission is comprised of Tabunch of Editist nuits out of Sacramento".

Guerin stated, in reference to the Coastal Commission's concerns about

de Public works yard makes no sense in What in the world is the Encinitas fit er City Council thinking about? Why he would we even consider buying the Off Mossy Chevrolet facility to use as a public works facility when it is one of large public works facility when it is one of large public works facility when it is one of the community is trying to entice such operations to locate within their

ng boundaries because of the tremenic, dous amount of sales tax they generof ate, but from all indications, not
we Encinitas.

If City Council feels that it is so
ge-well off that the loss of this substanight all source of sales revenue is of no
el consequence, it should cease it's
never-ending quest to raise taxes and fees.

Ist Isn't strange how this council can ist Isn't strange how this council can feel always find the money to do the fif always find the money to do the in things it wants but always badmouths the wishes of the public?

Fourther, can anyone imagine the image a public works yard would project of our community if it were located next to and in full view of the 1-5 feeway?

Almost as bad as placing a landas fill next to the entrance to downtown by La Jolla — dumb at best.

Watch the City Council November a election contribution reports for reverse of lations.

Terry Thompson Cardiff-by-the-Sea

Letters to the Editor and reader feedback are welcome Letters are subject to editing for length. Unsigned letters and letters without city of residence will not be published. Fiveus expressed in letters do not necessarily reflect the views of The Coast News. Letters should be typewritten, no longer than 300 words and institude a contact telephone number. Send letters via e-mail to letters@thecoastnews.som or to The Coast News, PO Box 232350, Encinitas, CA 92023.

RUSSELL MARK Leucadia

CARINFF 2/1 + den \$950/wk. or 1/1 \$750/wk. Fully furn. Wood flrs, sky-light, Indry, frple. Short walk to Swamis. Great view. Fenced. Pets welcome. (760)917-8379 CARDIPF 1/1, furn. w/sm. office. Skylights, frplc, fenced yd. w/fab ocn view. Pets OK. \$800/wk. (760)758-7515. Vacation Rentals Real Estate 700

NCTIMES, 6/25/06

Commission

Encinitas vs.

We were disappointed by the hostile attitude Mayor Christy Guerin took toward the California Coastal Commission at the June 14 City Council meeting when discussing the complete ban of new short-term rentals in Encinitas. Guerin seems empowered by her recent win when the Coastal Commission voted against its own staff recommendation. We do not believe that Guerin should have gone up to Monterey to Jobby for the developer, who will now turn a percentage of the new hotel planned in Leucadia to time

These hotel rooms, or time-share rentals, will be a minimum of \$400 per night.

We do not want our own council members going against and putting down the Coastal Commission.

Council is now proposing to lobby the Coastal Commission, uring a bus and, as suggested by Maggie Houlihan, taking retired attorney and local motel owner Charles Marvin with them pro bono. The Coastal Commission should not, on a single vote, go against the recommendations of its own saff, as it did before after Mayor Guerin applied the screws.

We are grateful for the Coastal Commission.

We are grateful for the Coastal Commission.

Subject: Oity & Encentas) Vacathor Kertala To Who It will Concern: Please allow all the Coast homes to be open to travelors to be open to travelors

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Encinitas LCPA 1-06 Page 111

JAN 2 4 2006

January 17, 2006

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

etters of Appoint

Sherilyn Sarb, District Manager California Coastal Commission San Diego Coast District Office 7575 Metropolitan Drive Ste 103 San Diego, CA 92108-4402

Dear Ms. Sarb,

We are currently working on behalf of numerous homeowners (which represent approximately 75 homes) that make available their homes as short term vacation rentals in the City of Encinitas, particularly immediately along the coast west of Highway 101. At the advice of our consultant, we are submitting this letter to outline our comments on the proposed vacation rental prohibition by the City of Encinitas. We fully concur with the Coastal Commission staff analysis (dated September 29, 2005) which recommends denial of the certification of the City of Encinitas's proposed Implementation Program Amendment No. 2-05 for the certified LCP as it would prohibit short-term vacation rentals in all residential zones and would significantly restrict lodging opportunities for coastal visitors to Encinitas.

Background

The issue of short-term vacation rentals is important up and down the coast of California that deserves special attention by the California Coastal Commission. Generally, the Commission has sought to regulate the use of short-term vacation rentals in cases where there is a demonstrated need to minimize conflict with existing coastal residents. However, the Commission has taken such action only when carefully balancing the intent of the Coastal Act to provide adequate coastal access and visitor-serving opportunities.

In Encinitas, short-term vacation rentals are a predominant visitor-serving opportunity, second only to daily beach access and use. Short-term vacation rentals are the most significant form of lodging west of Highway 101. Encinitas is also a significantly beach-access constrained community, with only occasional public lateral access points throughout the entirety of the City. Much of the lateral access to the beach is private held via bluff-top residential dwellings with private beach access.

Last fall, the City of Encinitas requested postponement of the scheduled October 2005 hearing on their proposed amendment with the intent of working with the Coastal Commission staff to respond to concerns raised in your staff report. The Commissioners granted this postponement unanimously and several Commissioners acknowledged that there can be potential conflicts with vacation rentals, but also emphasized the importance of vacation rentals for visitor serving opportunities and coastal access. None of the Commissioners affirmed the need or desire to prohibit vacation rentals in their comments.

Since this postponement request, the City of Encinitas has done little to address Coastal Commission staff concerns or respond to the comments of the Commissioners. City officials have not formally proposed any alternative to the prohibition of vacation rentals as originally submitted to the Commission. Little to no information has been submitted that demonstrates the significance of conflict with existing coastal residents as a result of vacation rental activity. The City has also not proposed an alternative to their prohibition which simply would regulate the use and activity of vacation rentals in Encinitas. There also have been no further public involvement opportunities to discuss or address this issue with the City since the postponement.

Key issues still not addressed by the City of Encinitas

- City of Encinitas has chosen to "PROHIBIT", rather than "REGULATE" short-term vacation rentals
- City of Encinitas does not adequately understand short-term vacation rental usage and any related problems (what is the <u>real</u> extent of conflicts?; who uses vacation rentals in Encinitas?; how many are there and what is the rate of growth?)
- City of Encinitas has not adequately addressed its lack of visitor serving opportunities, especially west of Highway 101 (several of the City's limited visitor serving commercial properties west of the freeway are gas stations!)
- The Commission has always been concerned with the lack of visitor-serving opportunities in Encinitas (this was noted in the Commission's certification of the LCP and in subsequent amendments)
- Private-gated communities like Sea Bluff (50 acres of coastal bluff-top and approximately 17% of the 255 units are occasionally rented) are only accessed by the public via short-term vacation rentals and are highly regulated by homeowners association rules voted on by an overwhelming majority of Sea Bluff homeowners (why can't the City of Encinitas propose rules similar to Sea Bluff?; if the public loses vacation rentals in Sea Bluff then they totally lose access to this substantial stretch of coastline)
- CEQA issues and significant un-mitigatable environmental impacts related to visitorserving accommodations, coastal access, and low-cost recreation facilities are not addressed by the City of Encinitas such that the Commission could fulfill its CEQA responsibilities in certifying the proposed amendment
- The City proposed ordinance and criteria to gain grandfathering status of a vacation rental as a non-conforming use is clearly crafted to discourage and completely eliminate vacation rentals in Encinitas over time

The City of Encinitas <u>has not demonstrated</u> it takes the issue of visitor-serving opportunities and coastal access seriously in their handling of the proposed Implementation Program Amendment No. 2-05 prohibiting short-term vacation rentals. We are encouraged the Coastal Commission has consistently addressed the appropriate balancing of visitor serving opportunities and coastal

access when previously considering vacation rental activities. Simply prohibiting vacation rentals is short-sighted and inconsistent with the Coastal Act.

We strongly encourage the Coastal Commission staff to maintain its staff recommendation of denying certification of the City of Encinitas's proposed Implementation Program Amendment No. 2-05 for the certified LCP. While the City of Encinitas has suggested the Coastal Commission Staff address concerns with suggested modifications, the City has not expressed a willingness to thoughtfully attempt to understand conflicts with vacation rentals and regulate them. We want to work with City officials to do a better job than their proposed amendment. This ought to be done with further public hearings and a thorough assessment of how the City of Encinitas will address the limited visitor serving opportunities in our Local Coastal Plan.

We look forward to working with you and presenting before the Commission when this item is agendized. We are happy to provide more detailed information on the use and activity of vacation rentals in Encinitas based on our extensive experience. You will find these are appropriately managed rentals with extremely limited conflict with existing coastal residents. Our typical visitors are families that return year-after-year as there coastal experience is arguable one of the most enjoyable anywhere along the coast of California.

Thank you for your work and careful attention to this issue.

Sincerely,

Chris Carrico and David Fischbach

Lul Fisikback

cc:

California Coastal Commission Meg Caldwell, Chair Patrick Kruer, Vice-Chair Dr. William Burke, Commissioner Mike Reilly, Commissioner Dave Potter, Commissioner Sara Wan, Commissioner Mary Shallenberger, Commissioner Bonnie Neely, Commissioner Steven Kram, Commissioner Dan Secord, Commissioner Larry Clark, Commissioner Steve Padilla, Commissioner Peter Douglas, Executive Director Deborah Lee, Sr. Deputy Director Gary Cannon, Coastal Program Analyst

Dietmar E. Rothe, Ph.D., M.A.Sc., P.Eng.

Research Scientist and Professional Engineer 1404 Rubenstein Avenue, Cardiff-by-the-Sea. CA 92007, U.S.A. Tel.: (760) 753-6827 Fax: (760) 753-2227 E-mail: rtr@sand.net

October 12, 2005

Ms. Sherilyn Sarb California Coastal Commission 7575 Metropolitan Dr., Ste 103 San Diego, CA 92108

RE: Encinitas LCP Amendment No. 2-05 (City-wide Vacation Rental Ban)

Dear Ms. Sarb:

It is my understanding that you are presently reviewing the City of Encinitas short-term rental ban, that was enacted by the Encinitas City Council on May 11, 2005 and which needs to be approved by the Coastal Commission. Moreover, I am informed by yesterday's North County Times that the City is seeking a postponement of your decision on that new ordinance.

As is evident from the attached literature, I strongly oppose this selective ban for the benefit of protecting the short-term rental market for a chosen few commercial "patrons." Please read my Community Commentary piece in the May 27, 2005 issue of The Coast News (in the enclosed packet).

What irks me most is the level of deception that has become standard operating procedure for the council and their puppets on the staff. And I am far from being alone in this observation, as you can infer from other comments coming out of this community.

Community Development Director, Patrick Murphy's remarks, quoted in the Oct 11 NCTimes article are misleading and erroneous. He says, "hotel rooms often provide a better value than short-term vacation rentals, which really aren't affordable." This is sheer nonsense. A survey of short-term rental ads in newspapers, internet and magazines shows that short-term vacation rentals run typically from \$600 to \$1000 per week for entire apartments, condos and houses, whereas the council-approved boutique hotel of KSL Encinitas Resort Co. will charge "from \$400 to \$600 a night" for a single room in the same vicinity (See "Encinitas resort plans topic of meeting," NCTimes, February 23, 2005 and "Change inevitable for Leucadia, but residents want a say," SD Union Tribune, January 5, 2003).

Mr. Murphy is also quoted as saying, "hotel rooms in Encinitas have a 30% vacancy rate, which jumps to 50% during the winter" and "that supports the issue that we're not denying coastal access." There are several deceptions in that statement:

- 1. The vacancy rates he refers to are worst-day vacancy rates and are not typical.
- 2. During Del Mar Fair days and Del Mar horse racing season, no empty hotel rooms can be found. This is also true during holiday season in the winter.
- 3. If there really is such a high hotel vacancy rate during other periods, it only proves that

the hotel accommodations are less desirable and more costly than short-term vacation rentals.

Here are some of the facts that are not readily available from city council or staff, but which you can easily check out yourself from more reliable sources:

- 1. The city-wide rental ban overturned a March 3, 2005 finding by the planning commission that "such a prohibition was inappropriate as a matter of zoning law."
- 2. Until you approve the ban, it violates present Municipal Code zoning law, which permits such rentals.
- 3. The city-wide ban on short-term rentals was the council's response to an unverified (no police records) complaint against raucous behavior of a few short-term tenants on Neptune Avenue. No such complaints were heard from anywhere else in the city.
- 4. The north end of Neptune Avenue has public beach parking lots frequented by many visitors. It is a "visitor serving area." Many short-term rental units exist there. Some noise is unavoidable.
- 5. The city-wide ban on <u>new</u> short-term rentals does not correct the alleged problem, as it lets the existing short-term rental operations continue unabated.
- The city-wide rental ban unjustly punishes retirees who want to rent out a room for extra income.
- The development-friendly council and the developer's attorney, Charles Marvin, favor the ban because it protects the hotel and time-share condo market and thus encourages more such commercial development.
- 8. The city council has recently approved the construction of a 126-room (now 130) "boutique hotel" near the north end of Neptune Avenue (the alleged problem area). This hotel is really a time-share condo complex (25 days/owner) that rents the units on a short-term basis for the rest of the year. Across the street, the council has also approved construction of another 26-room time-share resort. There is no doubt that these time-share condos will compete with the private short-term rentals (the real reason for the ban).
- 9. As I write this, the council is considering selling off 8 acres of the Hall property for high-density "condo development." Proposed lots are 35' x 70', which violate the municipal code for the present zoning of R-3, or even any other residential zoning code. (see attached map by RJM, the "park development" company). Why is the sports-oriented consultant under council direction dictating what a future buyer of the land should put on it against city code? The simple answer is that the "condos" planned next to the field lights and tournament noise are in reality short-term training camp accommodations for national and Olympic teams. (Such use of the Hall property has been discussed by the council with commercial sports teams in closed sessions). This also explains why the council wants to rewrite the rental ban to allow such short-term rentals in this particular residential area.

(Note: The so-called "Community Park" slated for the Hall site and originally designed by a citywide workshop has previously morphed into a competitive regional tournament complex, against the wishes of the majority of residents. As a further insult against the public, the council's proposed sports complex has insufficient buffer area between sports facilities and existing residences. The buffer, which is not even a passive park area "shielding" residents from noise, field lights and traffic, is now being eliminated entirely and considered for a 71-unit, high-density condo complex. It now seems that the "park" is again morphing into yet a major commercial sports center. The council believes they can get around the legal issues

with the bond holders, who financed the land purchase for a <u>recreational park</u>, by substituting 8 acres they hope to gain on Saxony from the Prop A Ecke deal for the 8 acres "removed" on the Hall site. But these proposed training camp units cannot get around their own short-term rental ban unless the latter is modified.)

I hope this letter and the enclosed material gives you an alternative viewpoint from the public's side, so that you need not rely on the "smoke and mirror" arguments from council and staff.

Sincerely,

Dietmar Rothe Concerned Citizen

Cardiff

cc: Mr. Gary Cannon Ms. Deborah Lee Mr. Lee McEachern

encl:

Newspaper articles Letters Hall condo map

P.S.

I have just been informed that the city council has moved at this minute (on 12 Oct 05) to abandon the idea of selling 8 acres of the Hall site for high-density condo development.

This makes the above point (9) arguments moot (for the time being). But I'll leave them in this communication for your interest to illustrate the kind of machinations that have become the hallmark of this council.

▼ HEARING

Continued from B-1

solve the problem by simply

enforcing existing laws. The Coastal Commission's

days or less deprives visitors access to the city's beaches. It also faults the city for providation in ginadequate zoning west of Highway 101 to allow for visitor-serving lodgings.

The city enacted its short term rental ban in response to complaints that late-night partying and excessive noise, trash and parked cars at rental homes had become a nuisance. Some property owners opposing the ban said they were conscientions land lords, and that the city could

ENCINITAS — The city is asking that the state Coastal Commission postpone its decision Wednesday on whether to authorize Encinitas ordinance banning short-term rentals. In a staff report, officials from the state agency have recommended that the commission reject the ordinance

said.
Some visitors may lose access to the city's beaches it vacation rentals of 30 days or less are prohibited in residential neighborhods, Coastal Commission staffers Gay Camon, Sherilyn Sarb and Deborah

"The vacancy rate is fairly

Encinitas seeks to delay rental hearing

NCT 11 OCT 2005

offices were closed Monday in observance of Columbus Day. Enchings officials last week mailed a request to the commission's San Diego office asking that the panel table its short-term rental debate, city planning director Patrick Murphy said Monday. "We waited an opportunity to meet with (the commission's) staff and clarify issues and discuss options," Murphy et al. [19]

tant asset in terms of lodging opportunities," the report says. "If anything, the city has demonstrated that the de-Lee state in their report.
"The availability of short-term rentals adjacent to the shoreline serves as an importions may need to increase to rentals is high and the supply of visitor serving accommodamand for short-term vacation

The Coastal Commission must authorize the city's ordinance because it calls for revi-

aren't affordable," he said.

During the summer months, Murphy said, hotel troons in Encinitas have a 30 percent vacancy rate, which jumps to 50 percent during the winter.

The commission's report cites a city survey and other records to outline concerns over coastal access for visitors.

Nearly 2.5 million people visit Encinitas beaches annually. Among them, 68 percent reported that they came from outside the city, 19 percent reported they were staying operatight in Encinitas.

A city 19 percent report states at least 112 short-term rentals operate in the city, and many of them exist in response to demand.

E Rental rates from \$750 to \$6,000 per week are cited, and the cheaper ones "offer a more affordable and desirable accommodation for many parties, especially families."

En the 19.4-square-mile city, only 41 acres are zoned exclusively for visitor-serving facilities.

visitorserving property west of Highway 101, none contains hotels or motels. The report notes that a 130-room hotel is planned on the bluffs in Leucadia.

Most hotels and motels in the city are not in visitors in the city are not in visitors. ■ Among the 14.5 acres of

➤ HEARING, B-7

in June. The report states that ban-ning vacation rentals of 30 approved by the City Council in June.

facilities are a top priority.
The short-term rental ban raises serious questions with (planning) requirements for promoting access to the city's "restricts lodging opportunities for coastal visitors and

high," he said, "and that supports the issue that we're not denying coastal access."
Wednesday's hearting begins at 9 a.m. at the Marriott San Diego Hotel and Marina, 33.3 W. Harbor Drive, San Diego.

postponing the hearing, but a shear and the agenda has been published, so the panel itself must authorize tabing the item.

According to Murphy, hotel rooms often provide a better justile walter than short-term wara-tion rentals, which "really beaches," the report states.
Encinitas officials need more time to review the concerns of the Coastal Commission's staff and to prepare a reply, said Murphy.

He said Coastal Commission staffers have supported

Rental ban shows council out of control

By Dietmar Both

As I watched our Encinitas council members with their hands over their hearts on May 11, reciting the pledge of allegiance ending with "... justice for all," I briefly succumbed to the illusion that they would honestly represent the interests of the majority of their constituents to the best of their abilities. But the illusion was soon shattered, when the council by a four to one vote approved their ill-begotten ordinance, banning all new short-term rentals in residential neighborhoods, thereby overturning a March 3, 2005 finding by the planning commission that "such a prohibition was inappropriate as a matter of zoning law."

The new ordinance, which amends the city's zoning code, was crafted in response to demands from attorney Charles Marvin, who in 2004 alleged that residents on Neptune Avenue were upset by the "raucous behavior of short term renters and their excessive number of vehicles" and that "if we don't stop it, it's going to change the community character." The complaints came from a few neighbors of vacation homes in and near the Sea Bluff condominium complex. No such complaints were heard

from any other parts of the city. I recently visited the northern end of Neptune Avenue, where it dead-ends against the gated 255-unit Sea Bluff condominium complex and found it no different from many other Southern California beach communities that provide public beach access. I doubt that it ever qualified as a tranquil residential neighborhood during the lifetime of this city, and I find it strange that Charles Marvin, a self-professed hired gun and champion for the real estate and building industry, would show any concern for

COMMUNITY COMMENTARY

tranquility, community character and quality of life. In the past, he has always represented developer interests, bending city codes to the detriment of existing neighborhoods.

What then is really going

The new citywide ban of new, short-term rentals is not only grossly unjust to homeowners in this city and their proper-ty rights, it also defies all logic. The new ordinance allows the offending parties on Neptune and Sea Bluff to continue unabated. It is hard to believe that the alleged complainers fully endorse the new ban, when in fact they will get no relief from it. Instead of banning short-term rental by absentee owners and the rental of multiple units, the ordinance punishes the retired, longtime homeowners who want to rent out one of their rooms as they see fit to supplement their income. When government offi-cials make decisions that mock justice and logic, it smacks of favoritism and deception, and it

reeks of iniquity and graft.
Could it be that Charles
Marvin and the City Council
want to protect the short-term
rental market, which can bring
in between \$400 and \$1,000 perunit per-night, for a chosen few
patrons? Great personal gains
could flow into selected pockets
with such a monopoly market.
Note that Mr. Marvin is a board
member of the EncinitasLeucadia Hwy 101 Mainstreet
Association, where his business
affiliation is listed as Gold
Coast Enterprises, which specializes in property management.

gun and champion for the real Be it also noted that just a estate and building industry, would show any concern for condos, the city has already

approved the construction of a 126-room "boutique hotel," which in truth is going to be a condominium complex. KSL Encinitas Resort Co., the developer of the complex, intends to sell the units to individual partime residents, who can occupy the units for up to 25 days at a time. A "hotel agent," yet to be named, will rent the units on a short-term basis for the rest of the year. Moreover, across the street from the "hotel," developer Dan Reedy is planning a 26-unit time-share resort. So what quiet community character can still be protected next to Sea Bluff?

With all this going on in residential Leucadia, why is there a concern about a few other short-term rentals throughout the city? Two council members at the May 11 public hearing tried to justify this selective ban by quoting Policy 1.13 from the city's General Plan: "Visitorserving commercial land use shall be located where it will not intrude into existing residential communities." They evidently consider all short-term rentals as commercial, even though this policy explicitly states that, "bed and breakfast facilities may be compatible in residential areas." Why are council members always quoting incorrectly from General Plan when it suits their argument, but ignore the policies when they are appropriate? For example, this same Policy 1.13 specifically prohibits "participant sports and recreation" in residential areas and should prohibit the council from putting their pet competitive sports complex, which would draw up to 15,000 participants and spectators (2002 estimate) to their Rotary Soccer Tourneys, on the Hall property. The latter is zoned R-3 residential and is surrounded by approximately a thousand single family homes in a predominantly residential area.

> 5/27/05 est news

LETTERS TO THE EDIT

What's next?

To the readers of The Coast News who live in Carlsbad: Beware of the band of bandits that is the Carlsbad City Council and their ringleader, humbling Bud Lewis. The people who live on the normally quiet dead end street of Harbor Drive are to have their neighborhood ruined for an exit expressway.

This neighborhood has remained the same since the 1960s. It breaks my heart to see how these so called leaders sell out their citizens in a half a second for a bag of developer campaign cash.

Beware — your street is next. Mike Maras of & Carlshad is

Council action short sighted

article "Council OKs rental ban over last minute objections" which was published in the May 13 issue of The Coast council's attitude is very short sighted News. I find the council's attitude to say the least. about this issue amazingly short sight-

ed to say the least.

I live in Lake San Marcos but spend a lot of time in Encinitas simply because I like what it has to offer: great beaches, great places to eat, the people are friendly and it has a nice country town feel abut it. I imagine the shortterm rental people visit Encinitas for similar reasons.

Unfortunately, not all people in our society are considerate of others and an example given in the article was mutually incompatible and strongly of loud parties at night resulting in the

Letters to the Editor and reader feedback are w. Unsigned letters and letters without city of resu letters do not necessarily reflect the views of The longer than 300 words and include a contact tel letters@thecoastnews.com or to The Coast New.

sheriff's office being called.

I have to ask myself, out of all the people who use short-term rentals, what percentage of those people would cause a disturbance and I would imagine it is a very small percentage. Why is the council prepared to let a small percentage of people ruin it for the rest? The money the short-term rental people bring into town I am sure is substantial and a lot of businesses benefit from them.

I seems to me that the council is overreacting and closing down a means of accommodation for people wanting To the Editor:

I feel the need to respond to the does not make a great deal of sense. to visit the beautiful town of Encinitas

The council should rethink this important issue. At the moment, the

> Pam Medro Lake San Marcos

Economics and ecology not mutually exclusive

To the Editor:

In the May 6 "Observations from the Edge" column, Bob Nanninga complains that, "People with ecological concerns have been reduced to fringe contrarians." He then claims that libertarianism and environmentalism are

27 MAY DI

The facts on short-term rental ban

As a 35-year resident of
Encinitas, and as a long-time reader of your mewspaper, I was saddened and alarmed at the inaccuracies appearing in your a

commercial of the converted as the column sets of the dizes of the diz The City Council's action to a council and the City Council's action to a council and the council and a constant of a disturbing trend to convert a beach area homes in residential reordinance was considered for the approximately a year and a half we have seven public hearings it at which all of our city's residents in the an opportunity to be heard. Contrary to the column's bandon propriet of the column's bandon, and the column's total. neighborhoods into motel-style commercial operations - without any consideration of the impacts on their residential neighbors. The

ly out of line), the Encinitas City Council is not "out of control."

tion of zoning laws. It was the was requesting and the position of the opposition to this new ordi-nance. The City Council's action result of careful serviny and crafting by city staff and the city attorney. It represented a compromise between what Encinitas Citizens for Residential Stability, or ENCIT,

protect the residents?
Rothe's said the decision "smacks of favoritism and decep-

"great personal gains" by the enactment of this ordinance and that somehow there was a conspiracy on the part of myself and the city Council "to protect the short-term rental market, which can bring in between \$400 and \$1,000 per unit, per night, for a chosen pure yellow journalism.
The column's attack on me is false and malicious. The implication is that I would be receiving condominium complex."

It's always fascinated in that those opposing the short-term by the station rental ordinance start and the station rental ordinance start and the station what happened to the property rights held by the resi approperty rights held by the resi approperty rights held by the resi and property rights held by the resi and formal neglectory editions of the station of commercial more activi-

per might have considered the effi-cacy of a fact check. As any mem-ber of the cuty staff or the City Council will confirm, our firm's clients sought from the beginning a total ban on all short-term vacafew patrons." Mr. Rothe and your newspa-

The City Council, by enacting ordinance, made "decisions the ordinance, made "decisions that mock justice and logic?" How can you mock justice and logic when you enforce the intent of the

My blood really began to boil when Mr. Rothe accused me and the city of conspiring for personal

ties next door?

Turn to Rental ban on Page A25

zoning code to provide for various land uses throughout the city that

Continued from Page A4

and his implication that I represented the ENCIT group for "per Editorial" page.

Sonal gains" couldn't have been Cloaking Mr. Rothe's column unity further from the truth.

information of community to deception because all of the issues were dearty after before the City council as well as the Planning to commission and a City Council as well as the Planning to Commission and a City Council as well as the Planning to Commission and a City Council as well as the Planning to Commission and a City Council as well as the Planning to Council as well as the City of the Council as well as the Council as well as the City of Council as well as the Council as well as the City of Council as the Cit

own property.

The Coast News does an excellent job of covering local news up and down the coast. In the past you have covered contro-versial matters through the writings of columnists. There is, howev-

not specialize in "property man-agement." It is the name under which my wife and fronduct busi-ness with one property the Gold Coast Plaza. The sole purpose of that entity is to take care of our

er, a difference between columns and what appears to be an editori-

ad for enfarcement of noise and 20 NUL 24 UN

REBUTTAL TO MARVIN'S COMMENTARY

Dear Lynn,

Dietmar and I thank you so much for this, it was so well said.

R&D

----- Original Message -----Subject: Fw: Fact vs. Opinion
Date: Fri, 24 Jun 2005 21:23:59 GMT

From: boxofpoems@juno.com <boxofpoems@juno.com>

To: cardiff-info@sand.net

----- Forwarded Message -----

We are disappointed by the June 24 Community Commentary by Charles Marvin, III. We question Marvin's designation as STAFFWRITER. He accuses Dietmar Rothe of being malicious and slanderous. We submit that the reverse could certainly be said. Marvin's diatribe attempts to vilify Rothe.

Unfortunately, Marvin's comments do not ring true. This appears to be just another spin piece promoting partisan, nonobjective opinions, which masquerade as facts. Marvin seems to believe his take on the rental ban is the consensus opinion: it is not.

Marvin berates Dietmar Rothe for his alleged inaccuracies. Rothe's May 27th piece was provocative, well-received, and welcomed by many concerned community members.

During two recent televised Council Meetings, most of the opinions expressed by citizens were against prohibiting all future short term rentals. The only petition submitted was from those who oppose the ban. Council did refer to oppositional e-mails it had received, but did not provide them.

A complete future ban is illogical and unfair because it does not solve the problem of an abusive few who have taken advantage. Marvin, being a lawyer knew, or should have known, that those already providing short term rentals would be grandfathered as legal non-conforming.

Marvin accuses Rothe of practicing "yellow journalism." On the contrary, we applaud Dietmar Rothe for his community activism, his unflagging efforts towards protecting our individual freedoms.

The proposed ordinance is awaiting approval by the Coastal Commission. We can contact them with our concerns. This over-regulation would limit the availability of affordable short term vacation rentals for the general public, and would infringe upon hard-won property rights.

Lynn Braun 434 La Veta Ave. Leucadia, CA 92024 760-436-0129

PUBLISHED IN CN IJUL 05

ser 100 much protest

REBUTTAL TO MARVIN'S COMMENTARY

Subject: Re: Too much protest

From: Rose Rothe <cardiff-info@sand.net> Date: Sat, 25 Jun 2005 13:39:19 -0700 To: Gsbotanico@aol.com

CC: AvilaBooks <avilabooks@sand.net>

Jerry, thanks for your support. Mr. Marvin, and I say this loosely when I address him in this manner, deserves what he gets from those who know him much too well. I have left the council chambers on several occasions when he told bold face lies and got away with it since there was no ability to rebut his statements when they occurred. Now is the perfect time to rebut his statements in an arena much larger than at city hall. Thanks for getting your licks in dear friend.

R&D

Gsbotanico@aol.com wrote:

To the Editor:

Charles Maroin protests too much. In his Community Commentary of June 24 he attacks Dietmar Rothe for expressing his opinion. The Coast News has given Mr. Maroin an opportunity to express his opinion. This is called free speech.

I have observed Mr. Marvin on two occasions as the lawyer representing developers before the Encinitas city council. In the first case on a Planning Commission appeal to the city council, Pignotti/McBride vs.Staley, he obtained a victory based on a very questionable method of slope calculation. The code requires a different method, but staff, Planning Commission, and city council members chose to ignore this. In the second case on an automatic Planning Commission appeal to the city council, the Taco Auctioneer/Miracle Cafe property, he obtained a variance that allowed a required loading dock to be put on the street. There was strong community opposition, but there will now be a loading dock on busy San Elijo Avenue ½ block north of Birmingham.

Both cases suggest undue influence with strong hints of unethical conduct, especially at the Planning Department level with the support of city employees Bill Weedman and Patrick Murphy. Mr. Marvin seems to get preferential treatment from the city that is not available to others. Any reader who thinks Mr. Marvin was treated unfairly by The Coast News or Mr. Rothe should attend city council meetings and see for themselves. He certainly has been treated well by the city of Encinitas.

Gerald Sodomka
105 Mozart Avenue
Cardiff by the Sea, CA
760-753-0052 PLEASE PRINT THIS LETTER IN ITS ENTIRETY.

Rose Rothe
Cardiff-by-the-Sea, CA
http://www.CitizensForQualityOfLife.org

PUBLISHED IN EN 1 JUL 05

To: Editor of The Coast News

From: Dietmar Rothe

Re: Rebuttal of Charlie Marvin III's Accusations

Date: June 25, 2005

Dear Editor:

Below is my rebuttal to Charlie Marvin's vilification of me personally and of The Coast News regarding my Community Commentary of May 27.

The source of this hit piece is most probably the "good old boys (and women) club," which has at least three members on the Encinitas Council and represents major development interests. The latter are moving into Leucadia to "infill" every square inch of open land left. Marvin's piece reminds me of similar diatribes by Gary Loda (Encinitas Chamber) and by Mike Andreen regarding my expose on the Ecke MOUs on 26 February 2004.

My first inclination is to let the accusations and misrepresentations ride. Those who know both me and Mr. Marvin will draw their own conclusions.

However, if you feel you need to defend yourself against accusations of publishing "yellow journalism," whatever that means, go ahead and publish my rebuttal. As Mr. Marvin claims to be on your staff, he will most likely see this letter either way. Tell him I am not intimidated by his allegations.

Regards, Dietmar

Rebuttal to Charlie Marvin III's Community Commentary

Mr. Marvin's Community Commentary of June 24, titled "The Facts on Short-Term Rental Ban," presents very few new "facts." Instead, its sole purpose appears to be one of accusing me of being "malicious and slanderous." I consider his diatribe, which vilifies me personally, as being itself malicious and slanderous.

My May 27 Commentary presented well known information, most of it previously reported in public documents and news reports. The questions posed in my article are only those that any thinking person would logically be concerned about. This can hardly be called "yellow journalism." If Mr. Marvin felt that his integrity was unjustly questioned, then I am deeply sorry and apologize for having caused him unintended grief.

His hit piece, however, is full of misinterpretations, distortions and quotations made out of context.

He states that contrary to my assertions "the ban on new short-term rentals ... was neither ill-begotten nor illegal." I never claimed that the selective ban was "illegal," only poorly thought out and unjust. He further emphasizes that the "ordinance is not in violation of zoning laws." I

never stated that it was. I only quoted the Planning Commission's ruling that "such a prohibition is inappropriate as a matter of zoning law." Besides, before the council's ban on new short-term rentals and their amendment of the zoning code, such a ban would indeed have been in violation of the then existing code.

He questions my assertions that the ban on only new short-term rentals "mocks justice and logic" and "reeks of iniquity." I stand by these assertions, because such a selective ban is indeed neither just, nor does it make sense, as it does not correct the problem it is purported to solve. As for noise and nuisance control, the municipal code already had adequate ordinances in place.

My statement that the selective ban creates a monopoly market and that, "great personal gains could flow into selective pockets," is only a logical deduction. My comment referred to the now protected gains that can be reaped by the existing short-term rental units, plus the planned 126-unit condominium hotel and the 26-unit timeshare resort approved for construction right next to the Sea Bluff community. This remark was not meant to attack Mr. Marvin personally. But let him whom the shoe fits wear it.

As for the "Gold Coast Enterprises" specializing in property management, see www.goldcoastent.com on the web. If Mr. Marvin's business is not associated with this statewide property management corporation with that same name, then perhaps he should change his business name, as it infringes on the protected trade name of another corporate entity doing business in this area.

Dietmar Rothe Cardiff-by-the-Sea 760-753-6827

NOT PUBLISHED

I was disappointed to see in today's Coast News Charley Marvin's hateful diatribe under community commentary. He is listed as "staff writer." He does not give facts, but again, twists the truth to put his spin on Dietmar's welcome (by us) article of May 27. Mr. Marvin does not give facts, merely his partisan opinions.

To our knowledge he owns now, or has owned actual motels along 101. Of course short term

To our knowledge he owns now, or has owned actual motels along 101. Of course short term rentals do compete with these. Gold Coast is just one of many commercial properties Mr. Marvin owns in the City. My ex husbands second wife (now also his ex-wife) worked with Mr. Marvin. For awhile, after I was separated, I lived with Marylou Marvin, his first wife, and the mother of their two children Natasha and Tarra. Natasha was a friend of my daughter, Nicole. So I know the family a bit. Marylou and Charley had a very bitter divorce. He probably doesn't...

Russell was given Mr. Marvin's name by someone re our legal problems with city. He contacted Charley, thinking through him, perhaps we could settle with the City, or at least address poor conduct of code enforcement officer Marianne Buscemi. Mr. Marvin would not take our case, or help us, even giving us another lawyer's name, because he did not want to jeopardize his very cozy relationship with Council and City Attorneys (probably staff, too.)

I am sorry Dietmar was vilified by Marvin. He doesn't deserve that, but I am sure he realizes how down and dirty council and all of their lawyer associates can get.

Lynn

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Officer Pounter P.O. Box 233 Cardiff-by-the-fox, Ca. 92007-0333 Call Fb: (619) 987-5749 Office Ph/Fac: (760) 943-8238

July 11, 2005

Letters to the Editor - Community Commentary

I was saddened and alarmed by the honorable "Judge" Charles Marvin's portrayal of the facts as seen through the eyes of his "court" in the Community Commentary of the June 24 issue of the Coast News. Mr. Marvin's judgement is that the City Council's action to ban all short term vacation rentals city-wide was not ill-begotten or illegal. Fortunately, the issues surrounding the over broad, most-like city wide ban of short term vacation rentals, while continuing to encourage and allow commercial bed & breakfast establishments in residential neighborhoods, will not be heard in any court presided over by Mr. Marvin.

In January of 2004, the Encinitas City Council amounced that as part of their goal setting agenda they would explore ways to strengthen controls to midgate any potentially negative effects of short term vacation rentals in the city. At this time, the direction was to strengthen regulations, not to eliminate short term vacation rentals. The city staff and council have all acknowledged that any negative effects of short term rentals are not unique and are experienced in all Encinitas neighborhoods, including neighborhoods where short term vacation rentals are non-existent.

However, the ciry council's more recent actions were taken in the unfounded four that there was a profiferation of conversion of beach area homes into hotel-style commercial operations, and that short term vacation remais were negatively impacting residential neighborhoods. Nother of these conclusions were based on substantial facts presented at any of the seven public meetings. Nor were they made available from city staff, nor supported by responses to residential calls by the San Diego County Sheriffs in a report that I recently received from the sheriff's Crime Analysis Division. Certainly, the property rights of residential neighbors are important. They should not have their quality of life destroyed by unruly short term vacation rental activities next door. But isn't that why we have the services of the San Diego County Sheriffs, and why Ms. Buscerni has the title of Senior Code Enforcement Offices? From these code & law enforcement groups, no substantial evidence has been made available to indicate that either of these enforcement bodies have been inundated by a "proliferation" of problems associated with, or unique to, short term vacation rentals.

On the contrary, as it is written in the opening paragraph of the ordinance banning short term remais:

"Whereas the City Council has determined that short term vacation results in residential zones has caused land use conflicts that are normally associated with residential neighborhoods."

the only 'evidence' presented to date that short term vacation rental activities are unreasonably impacting a substantial number of citizens has been resilmony from some members of the city council, stating that they "have been approached in stores and supermarkets and called at night and told of the problems that were the result of such remals." It has never been made clear whether these testimonials were from residents of Enchitsa, Carisbad, Solana Beach, the Kechler Elyes, "the man that Jack bought his magic beans from," or perhaps even from a small group of

disgruntled citizens who are not necessarily representative of the community as a whole

In any case, after the council's sub-committee and ENCIT agenda was submitted to the planning commission and roundly defeated as overkill and inappropriate, to everyone's amazement, except perhaps ENCIT's, the council ignored the planning commission's recommendations and directed staff to prepare an ordinance for an all-out ban on short term vacation rentals city wide. The ordinance was then crafted by city staff that included the city attorney, with input from the fringe group Encinitas Citizens for Residential Stability, represented by their counsel, Charles Marvin. It was only at this point that the Encinitas City Council's agenda of a city wide ban, rather than stricter enforcement of existing laws, became apparent. Talk about a proliferation: the citizen opposition to such an outright ban is growing weekly, and I believe it now more accurately represents a majority of Encinitas residents. Perhaps these staff and council actions are what led Mr Rothe to infer that "the decision mocked justice and logic and smacked of favoritism and deception."

In the June 17, 2005, issue of this newspaper, in a Community Commentary column, a very shortsighted view of the history of Encinitas short term vacation rentals and their benefit to every property and small business owner in the city was presented. These authors were the spokespersons for the group calling themselves Encinitas Citizens for Residential Stability.

The short-sightedness of that recent community commentary article may be no fault of this group. They may not have lived in Encinitas long enough to know its history. Or perhaps, along with some council members, they have conveniently developed a selective amnesia and prefer to recall the history of the area starting in 1997. As for myself, I first visited the area in 1968 when I rented for two weeks during race season. Eventually, I finally knew enough about horticulture to find employment and move here permanently in 1975. Still, this doesn't compare to some city residents who have spent generations here. I attempt to compensate for this by talking with many of the long term residents every day, absorbing as much of the past history of the city as possible. I love this city, its history, and its on-going evolution - so natural for a creature by the sea.

Short term vacation rentals have been a significant part of these coastal communities since 1937, when Bing Crosby, Pat O'Brian, The *Great Schnozzola*, and other friends decided that summers spent in this area would be much more interesting and exciting if there were a summer thoroughbred race season in the area. The money and efforts of this group were in large part responsible for the development of the "Saratoga of the West," the race track, and the short race season at the Del Mar Fairgrounds.

At that time, the road from the greater L.A. area to Del Mar was exclusively Highway 101, a road whose condition was as unpredictable as the weather in June. If a traveler was lucky, and no trucks carrying lima beans or cut flowers was broken down causing a bottleneck on the coast highway, the trip could be made in as little as four hours. The late post time for the first race is often attributed solely to movie stars who were slow to rise in the morning, though in reality it was set so that the patrons who decided to "take a train, take a bus, take a car" could still make the first race. This endurance trip from L.A. to Del Mar had many people not making the return trip back the same day. Many looked for accommodations at the few local motels. The seasonal nature of motel use and the bluff type nature of our local coastline doesn't provide the "beach at your door" setting that is more typical of Pacific Beach, Ocean Beach, and coastal Florida. With limited lodging opportunities being developed, most of the short term visitors and vacationers soon began to look to the short term vacation rental of residences, duplexes, or house trailers in

the area. This was the real birth of the short term vacation rental market in Solana Beach, Del Mar, Encinitas, Leucadia, Cardiff, and Carlsbad. With the end of WW II and the start of the "chicken in every pot and car in every garage" eras, America became mobile, and our climate, beaches, floral displays, breath-taking views, and clean air became a summer destination for more than just Hollywood's elite and racing enthusiasts. Today, visitors from throughout the state, across the nation and around the world continue to return to experience the magic of our communities and the Encinitas coastal zone.

In 1986, the communities of Cardiff, Olivenhain, Old Encinitas, and Leucadia joined together and incorporated in an effort to capture more of the increasing tax money being siphoned off to San Diego County. The new city finally had an acceptable general plan and local coastal plan by 1989. As the communities worked to become comfortable with their new suit of clothes, over the next eight years many changes to the general plan and supporting ordinances were made at various venues of city government. In those early years, the community advisory boards, planning commissions and city councils representing the four communities attempted to craft the ordinances that would eventually meld them into one city, a city that would maintain the traditions and community character of the past, and would be inviting enough that the Ecke family would want to be annexed to it in the future. These same elected and appointed officials were also working on the development of the Encinitas Ranch Specific Plan that was finally approved by voters in 1998.

By 1997, serious confusion and trepidation concerning the continued use of residences and duplexes as short term vacation rentals had to be addressed. The new general plan and supporting ordinances did not specifically indicate that it was an acceptable practice, although historical use indicated otherwise.

The issue was addressed by both the planning commission and city council. Language to clarify that the continued use of residences and duplexes as short term rentals was acceptable was developed by the planning commission and passed by the city council. It is clear from reading the planning commission minutes that the continued use of homes and duplexes in residential zones for short term summer and race track rentals was a traditional and beneficial use. Additionally, it was equally clear that the planning commission could not and would not justify additional taxes on residences and duplexes in the form of Transient Occupancy Taxes. The line had to be drawn somewhere, and three units, including triplexes, were not included in the rental or TOT exemption.

Mr Marvin is correct in saying that there is no question that a city council has the authority to protect the health, safety, and welfare of the citizens, and that the quality of life is an important factor in the governance of a city. However, there is no substantial evidence in the form of police reports or code enforcement citations to indicate that the health, safety, or welfare of our communities are at risk. There is only the unsubstantiated testimony of the 80 of 150 residents represented by and alkided to by Mr. Marvin. These individuals primarily represent a small but vocal group of disgruntled citizens from the Sea Bluff condominium complex. This core group was upset about losing a lawsuit and subsequent vote of the Sea Bluff Homeowners Association in 2002 by a "narrow" margin of 87%-13%. The majority vote set a one week minimum for vacation rental use in the Sea Bluff complex, which is a guarded and gated community developed and marketed with the specific intent of short term vacation rental use, as evidenced by the sales ads and brochures. This disgruntled core group, many of whom had served as officers of the Sea Bluff Homeowner's Association, lost their positions as officers, and have been on a vendetta ever

since. What has been especially interesting is that at the later council meetings, most of the opponents of short term vacation rentals were these same Sea Bluff residents, along with a small group of Neptune residents shepherded by Franz Birkner.

I'm sure Mr. Marvin would agree that it goes without saying that the property rights of the entire population of a city must not be casually sacrificed, and that all possible alternative remedies must be exhausted before diminishing an entire city's population of constitutionally protected property rights.

As for Mr Marvin's boiling blood and need to invoke the heavens for answers to his questions, this requires a brief aside.

I am a farmer, but that doesn't mean that I just fell off the lima bean truck. My grandfather, a senior partner of the law firm Morrison & Foerster, was my mentor. Mr. Charles E. Hanger, my stepfather, an attorney, and a man of great integrity, later became my mentor. The interesting practice of law remained regular conversational fare, even after my stepfather discontinued trial work and devoted himself to his position as President of the American College of Trial Lawyers.

Lawyers are a cross between a knight and a pit bull. If you don't have a tough hide and strong disposition, you should become a farmer, as I did. I've seen my stepfather come home with his teeth knocked out for crossing a picket-line to meet with a client, read stories in the newspaper about how his representing a major retail store in a child's sleep-wear case made him, "someone who would burn babies for profit." There were times he was deeply hurt, but he accepted that the vilification of counsel went with the territory, as attorneys publicly arguing emotional sensationalized cases are occasionally targeted by the press. Mr Marvin, if you're going to place yourself in the public's cross-hairs, you must be able to take the occasional "slings and arrows" of a free press.

If Mr. Marvin was offended by Mr. Rothe's statements, he might remember that Mr Rothe may not always have every bit of information that's available. Mr Rothe lacks a staff, and can only speculate and say, "what if." If he lacked the knowledge that Mr. Marvin represented ENCIT "pro bono," sacrificing all "personal gain," this wasn't information available to the general public. He had no way of knowing that his implications "couldn't have been farther from the truth." Mr. Rothe may have heard rumors that at one time Mr. Marvin considered counseling some existing all year short term vacation rental owner or owners. There are a million stories in the city, not all of them are true or are able to be substantiated.

The structure of the short term vacation rental ordinances, and the developing administrative policies to regulate them, will shut down and quickly eliminate the majority of the short term summer vacation and race track rentals citywide. The new regulations require that existing short term vacation rentals that would be "grand-fathered in" must be rented out at least once every 180 days. However, most existing short term rentals tend to be rented out during the summer months only. Summer is the time of year that the beaches and roadways are crowded; the ocean is tainted, either by red tide or sewage outfall; and the waves, comparatively speaking, are small and mushy. Short term vacation rental owners know this, and they rent out and travel during the summer, returning for fall, winter, and spring months when our weather and waves are the envy of anyone residing in an area with "a real winter." The majority of multiple residence or duplex owners making short term vacation rentals had adapted to the seasonal changes, charging higher rents during the three months of summer and the race meet, and reducing rental rates and seeking

established nine month renters during winter when schools were back in session and the regular residents returned. These ordinances will soon leave the handful of year around short term rental owners in the position of controlling the market. Because the council and city staff did not require a minimum stay for grand-fathered short term rentals, the potential for a number of homes to become very hotel-like does exist.

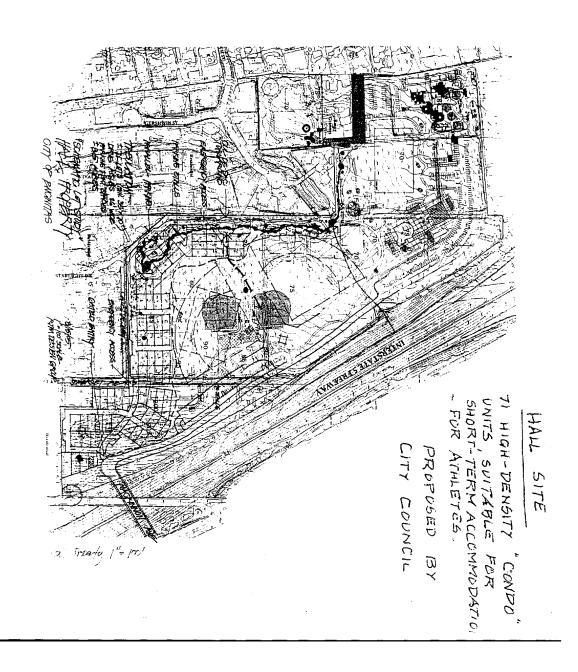
The city attorney, although working at the pleasure of the council, is in fact paid for with community tax dollars, and is supposed to counsel to protect all of the citizens of the community. I hope he is attentive to the potential misinterpretation of another feature of the projected revision of the TOT guidelines that bothers me. That is the possible definition of a short term rental as a "hotel" for TOT purposes. Just using the name hotel in any manner when referring to the existing bluff residences makes me uncomfortable. I hate the idea of bluff hotels in the City of Encinitas, but the unintentional "legal" establishment of such a definition could push the per unit, per night price above Mr Marvin's projections. This certainly wouldn't appear to benefit Mr Marvin's Gold Coast Properties but would certainly benefit the city's TOT revenue stream. Additionally, the continuation of existing, and the potential establishment of new, commercial bed & breakfast operations in all residential areas, left exclusively in the hands of the city council and staff, does strike me as setting the stage for situations that might "reek(s) of iniquity and graft", as Mr. Rothe speculated.

Finally, to Mr. Marvin's critique of The Coast News, in which he accuses the paper of exercising less than reasonable editorial control: The Community Commentary column is and always has been an "open mike," providing members of the community a soapbox to voice their unrestricted opinions on any subject. The raw purity of the Community Commentary column continues to serve as another window on our communities. The Coast News does do an excellent job, not only as a local news reporting source, but also as an independent free paper providing a community forum - a chat room if you like - for members of the community. Anyone reading the paper on a weekly basis would not only know this, but would also be familiar with Mr. Rothe's vitriolic style of communication as well. I know that I have personally responded to one of Mr Rothe's columns in which he expressed his belief that, "the City Council is out of control". To the contrary, the passing of this ordinance without substantial supporting evidence of its need, over the objections of an increasing number of residents, shows that the city council is very much in control, perhaps too much so.

Gilbert Foerster is a local grower, thirty year member of the community, member of the Farm Bureau, and an advocate of the California Coastal Act.

2979 words 111 sentences 237 lines 5 pages

Note: The two letters to the editor in the latest issue touched on many of my points. Please edit as staff feels necessary to conserve space. Please choose appropriate heading as editor sees fit, but nothing too inflammatory. Tks.



Gary Cannon California Costal Commission 7575 Metropolitan Avenue #103 San Diego Ca. 92108-4402 JUN 2 0 2005

6/12/05

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

Dear Mr. Cannon,

I am writing this letter in response to proposed ordinance 2005-06, 2005-09 Elimination of Short Term Rentals in the City of Encinitas. I am a business owner, and father of a 2 year old. I grew up in Encinitas, attended San Dieguito High School, and served in the US Navy.

I now live in Glendale Ca., but frequent Encinitas as often as time allows. Utilizing short term rentals are the only way for me to do this. Purchasing a second home is not realistic. San Diego County is one of the most expensive counties in America, as I am sure you are aware. For me, it is the only way to bring my wife and boy down to enjoy the life style that I grew up in, and share with him the things I did when I lived there. To me, there is no other place like Encinitas/Leucadia/Del Mar, along our coast. You can get in a car, start driving north on PCH, and see for yourself. That's why we come back.

I find it extremely un-fair for a group of people to simply take that right away from my family, not to mention people who have these properties for this reason. The coast of California belongs to Californians. I would think that the coastal commission was set up to ENHANCE the experiences of people who enjoy the lovely beaches of North County, not RESTRICT them. This will make it that much harder to find quality lodging, near the beach. I personally know of many people who come down for the Pacific Classic at Del Mar. Where would you stay? The Hilton, or on 23rd street, looking at the ocean, watching your 2 year old run on the beach.

Please re-consider this ordinance. I am not a transient, and neither is my family. I cannot afford vacations every year. I am a hard working small business owner, who enjoys bringing his family to a beautiful, safe, educational, and affordable getaway, that's 2 hours away. Its our vacation spot, 5 times a year.

Respectfully Yours,

Martin Wickman

Petition to the California Coastal Commission

I/We am/are opposed to the proposed changes to the Encinitas Zoning Code and the Local Coastal Program (ZCA/LCPA Case # 04-248). The proposed changes will dramatically affect the ability of citizens to access and recreate in the coastal zone of the City of Encinitas. Short-term vacation rentals of homes and duplexes have been an accepted practice in the community for over 50 years. Those renting short-term vacation rentals of a single-family home or duplex dwelling unit in the City of Encinitas are generally citizens and families that return year after year and feel connected to the city and local coastline.

This goes against the tenets of the Coastal Act guaranteeing access for recreating in the coastal zone. The over 30-day rental period will especially limit families visiting the coast.

Some of the homeowner income obtained from short term rentals helps Encinitas meet the requirements of supporting the maintenance, conservation, and preservation of existing affordable housing in the coastal zone and preserves the unique character of Encinitas' unified coastal communities.

I do support regulations to control noise, late night disturbances, parking and traffic congestion, but these problems exist in all residential neighborhoods and I believe that enforcement of existing laws and ordinances are a better solution than the proposed zoning changes that restricts the property owner rights and public access to the coastal experience in greater Encinitas.

Please reject ZCA/LCPA Case # 04-248 as an excessive restriction for a problem associated with all residential neighborhoods and help protect access and recreational opportunities in the Encinitas coastal zone, which have always been consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Name: Kathy Peery Address: 1760 Kennington Rd. Encinities (# 92024)

Signed: Attly Pelly Date: 6-18-05

The Commission
Received 50 other
copies of this petition
signed by Individuals.

Gilbert Foerster P.O. Box 333

Cardiff-by-the-Sea, Ca. 92007-0333

Cell Ph: (619) 887-5749 Office Ph/Fax: (760) 943-8288

DATE: July 5, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon

RE: Ordinance No. 2005-06, 2005-09

I have just recently returned from four days in Carmel, California where I spent time investigating the differences and similarities between the two cities since everyone in the city government of Encinitas seems to think they are alike enough to expect a similar ruling for the elimination of short term rentals in our city. My mother has lived in Carmel for years so the trip also allowed me to visit my family.

To quote one of the speakers that appeared before the city counsel, "The two cities couldn't be more dissimilar. If one were too compare them, it becomes evident that it is as if they were on different planets." So we will spend this letter comparing them.

The road into the City of Carmel is a two lane road most of the way from Salinas on Hwy 68, or two lane much of the way on picturesque Hwy 1. Carmel is a city with a population of 4081 people and 847 dogs. It is approximately 1(one) square mile(634 acres). Initially, the city was primarily comprised of second homes for wealthy families not from Monterey county and small homes that were a mecca for artists, writers, actors and playwrights intent on creating a cultural oasis. The residential district has no sidewalks or streetlights and the entire beach area is unadulterated by commercial development. The homes have no street addresses and are known only by name or their location in relation to Ocean Avenue. The village is home to over 50 inns, numerous Bed & Breakfasts, and a handful of hotel/motels. Many of the shops, galleries, boutiques and restaurants are located in secluded courtyards. Comfortable walking shoes are a must and a city ordinance outlaws high heels. Eating food on public streets is discouraged. In a city with a population of 4081 and approximately 2500 residences, there are 980 transient habitation units in inns, hotels, or bed and breakfast establishments. This is approximately one transient habitation unit per 4 residents or one transient habitation unit per 2 ½ residences.

The City of Encinitas is approximately 20 square miles(13,266 acres) of which 12 ½ square miles(7874 acres) are located in the coastal zone. Initially the city was comprised of residences and agriculture, at one time the 'flower capital of the world'. Additionally, the city coast has five of the best surf breaks south of trestles and is the surf capital of San Diego county. The city has over 24,000 residences and a population of over 58,000 inhabitants. The part of the City in the coastal zone is intersected by historic Hwy 101, a four lane highway, and Interstate 5 an eight lane freeway with six off-ramps emptying into our communities. Hwy 101, our coast highway, is a mix of single family residences, duplexes, triplexes, apartment houses, and mixed commercial uses between the highway and the ocean. Along this coastal corridor highway, which runs for 3 ½ miles, there are 5 small older motels, two newer motels, and two bed and breakfast establishments. There are two freeway off-ramp motels for people passing through the city, providing a total number of visitor housing units of approximately 700. This is one transient habitation unit per 85 residents or one transient habitation unit per 34 residences. Part of the

solution to this woeful lack of available housing for visitors with our city as a destination has always been (since the thirties), short term vacation rental of residential units and duplexes in the immediate coastal corridor for summer vacationers, race track horse owners, trainers and employees and beach enthusiasts coming to enjoy our beaches and surf breaks. This has provided temporary housing for families coming to our beaches and Del Mar race season residents. Much of our older residential housing was built following agriculture, first with cattle and dry farming of lima beans, then as water became available with cut flowers. The newer residential housing is primarily in-fill on discontinued flower fields, the annexed Ecke agricultural properties, or the previously undeveloped Olivenhain back country area. We don't ban high heels. We don't discourage eating on public streets. We are a mecca for citizens with active lifestyles which includes board surfing, wind surfing, jogging, skateboards, bicycling, and other active life activities. We have protected lagoons at the north and south ends of the city which provide short term housing for various migratory birds as well as full time resident species populations. The south lagoon is the start of the wildlife corridor projected to stretch uninterrupted from the coast to the mountains to the east.

The six blocks from Highway 101(Vulcan Ave.) to the ocean is not exclusively a residential area but are a mix of single and multiple family residential units, interspersed with a mish-mash of eclectic businesses, restaurants, bars, fast food restaurants, boutiques, churches, the Self-Realization Fellowship, Santa Fe Railway and NCTD sprinter, convenience stores, surfboard shops, tattoo parlors, veterinarians, grocery store, donut shops, sandal makers, post offices, medical and dental offices, real estate offices, newspaper offices, shopping center, as well as heavier commercial businesses including, glass repair, door and window manufacturing, building materials, auto repair, and lawn-mower repair. These businesses can be found on every street in this area except the street right on the bluff in Old Encinitas and Leucadia. The 250 unit Sea Breeze condominiums were built and sold with full understanding that they could be used as rentals as well as full time residency. The ads in the papers during the initial offering and sales period all made mention of this feature and that if you were unable to rent them yourself, rental management assistance was available. This too may change as the closed Pacific View school is under consideration for a massive office building and parking complex.



GILBERT FOERSTER P.O. Box 333

CARDIFF-BY-THE-SEA, CA. 92007-0333 CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288



DATE:

May 03, 2005

City Council/City Attorney/City Staff/Gary Cannon, et al.

MAY 1 6 2005

RE: Ordinance No. 2005-06

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

I understand how difficult it was, perhaps impossible for some, to support the delay in the second reading of Ordinance No. 2005-06 at the City Council meeting held April 27, 2005. I appreciate your patience. There should be no harm to the Ordinance, if it is sound, by delaying the second reading for two weeks.

Many times in government, bills, treaties, and all sorts of decisions drag on for what seems like forever, sometimes they are abandoned after decades of work. No rush to judgement is required in this case if the finished package is going to be attached to some future Coastal Commission agenda. If, as Patrick Murphy hinted, some method has been found to bypass or expedite Coastal Commission approval, then this is all the more reason to allow a more thorough examination of the particulars of the legislation.

The undeniable fact that many hours were spent on this issue over the last two years by citizens, public servants, and city staff does not in itself justify continued support if new information or facts expose flaws in the ordinance. Until the fifteenth century everyone believed that the earth was flat, but when new factual evidence surfaced that supported the case for a spherical planet, the accepted doctrine changed.

As I left the council chambers a week ago Wednesday, twelve of the ordinance's most adamant supporters, almost all of whom were from the Sea Bluff condominium complex, were gathered on the quad expressing their frustration at the delay and wondering who or what was responsible. I stepped forward and informed them that I was primarily responsible, and volunteered to explain my actions leading up to the council meeting. As I am sure some of you can well imagine, I was not received with open arms. Of course I was chastised for attempting to upset the apple-cart that they had spent years promoting. After only a few moments most of them had left with bitterness in their hearts, although I was able to convince the remaining two gentlemen to listen to my position and take copies of the petition I had been circulating, along with the petition I had prepared for Coastal if the second reading had gone forward that evening. I convinced them that it was in their best interest to digest my position and arguments, if for no other reason than to parry them. They did not provide me with a name or mailing address so that I could keep them abreast of my 'faulted' arguments, so I will trust that one of the council members or city staff will do that for me.

Please understand that although I am primarily a supporter of the preservation of coastal agriculture, I have also appeared before the Coastal Commission on the preservation of wildlife habitat in the Tijuana estuary. My family has been a proponent of California and its coastal welfare since 1896. I would be remiss to my heritage and upbringing if I did not speak up on occasion on issues basic to my core. Some may wish that I had not relocated to Encinitas 30 years ago this year, but I came here because this was the flower capital of the world, with a unique climate zone replicated in only seven other locations in the world, and I make my living in California agriculture as my great-grandfather did.

Over the next eight days I will write as time permits a number of letters to you as I attempt to present other perspectives on the current legislation. I know that this is unpopular with some of you, especially those who expressed that there was nothing that could be presented in the next two weeks that would influence their position. I accept that, but certainly hope you will read the letters, if for no other reason than to understand the arguments that I will present if this goes to Coastal, as well as some of the potential legal arguments that might be advanced if some of the property owners in the city move this issue to the courts. Maybe you have heard it all and are comfortable with the ordinance in its present form, maybe not.

But enough chit-chat, let's try to get down to the lick-log: <u>Today's item:</u> <u>Property Rights</u>

- As the planning commission noted, the council does have the authority to regulate nuisances and conflicts that may arise between short term rentals and permanent residences. Because these conflicts, which include noise, parking, traffic congestion, trash, late night disturbances, overcrowding and the like are normally associated with all areas of Encinitas residential neighborhoods and are not exclusive to short term rentals, the regulatory process and strict enforcement of existing laws rather than a zoning change is the proper method to control the impacts. To change the zoning in a manner that affects every dwelling unit in Encinitas, potentially impacting property values, ability to finance, and ability to meet financial payment obligations associated with private property, the council is effectively using a hand grenade to kill a mouse.
- Because the changes impact every dwelling unit in every section of the city, a notice should have been mailed to every resident and property owner within the city. It is unreasonable to expect a majority of the population of Encinitas to read the notice in the Coast News and grasp the implications. The action changing the zoning smacks of something you would find in a CC&R. I do not believe that the property owners in the City have been adequately noticed for such a dramatic action. This can not help but affect property values and resale price. The benefit of no rentals in the city of Encinitas may have value for some, but the loss of the ability to rent now or in the future may be devastating for some current and future property owners.
- If you listen to the tapes of the discussion preceding the removal of residential units and duplexes from the definition of Transient Habitation Unit on September 10, 1997, it should become difficult to support redefining them as such in this ordinance.
- The major support throughout the crafting of this ordinance has come from a group of residents of the Sea Bluff condominium complex in Leucadia. This group has been vocal, attended the workshops, and showed tenacity in shepherding this proposal through Council approval. This is all the more impressive, considering that the Council's appointed planning commission members recommended "No Action" on the zoning amendment, preferring to focus on regulatory methods to control the impacts associated with some of the short term vacation rentals.
- The Council decided to disregard the planning commission and move forward and ban short term rentals within all residential neighborhoods, attempting to freeze the natural metamorphosis that may occur within a coastal community.

Gil

GILBERT FOERSTER P.O. BOX 333 CARDIFF-BY-THE-SEA, CA. 92007-0333 CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

DATE:

May 05, 2005

TO:

City Council/City Attorney/City Staff/Gary Cannon, et al.

RE:

Ordinance No. 2005-06, 2005-9

Transient Habitation Unit/Short Term Vacation Rental/Non-conforming Use/

Additional Related Impacts/Tenant Rights

Transient Habitation Unit

A transient habitation unit is generally considered to be just what the name implies, living quarters for transient persons and generally includes hotels, motels, cabin or campground space. They are meant to provide temporary housing for individuals or groups passing through our city with some other location as their ultimate destination.

Short Term Vacation Rental

A short term vacation rental unit is generally considered to be just what the name implies, providing living quarters, including a kitchen, bath, and yard, in a single family residence, guest house, condominium, duplex, townhouse, multiple family dwelling, ranch or estate, with the amenities normally associated with such dwelling units. Short term vacation rentals are generally occupied by families for one to three weeks. Unlike transient habitation units, they provide housing for individuals or groups who have reached their final destination: our city, our beaches, our back country and associated businesses. They are dwelling units for short term residents of our city. Many families that visit as short term residents return year after year to the same dwelling units, some for generation after generation.

Non-conforming Use

The abandonment of the staff-recommended changes to Section 30.76.090 concerning "Termination of Nonconformity, General," which proposed allowing 360 days rather the existing 180 days of inactivity for a non-conforming short term rental before becoming inactive, will effectively eliminate short term rentals in the entire City as well as those made exclusively during summer months and the Del Mar race season. Many home owners depend on a series of two week rentals during the "high season" for everything from property maintenance, property taxes, homeowners insurance, to supplemental retirement income. If the property owner decides to skip a year, or doesn't want to rent their home every 180 days, or doesn't want to rent at this time but may at some time in the future, they will not have that option. This change will not eliminate the atypical situation presented by the David Fischbachs of the world, where the financial wherewithal to operate their property at an occasional loss to maintain their eligibility as a short term rental property is an option. Instead, this may force families that have come to depend upon high season rentals, to sell their property sooner, opening the door for more monstrous homes between I-5 and the coast or force a back country estate set up for equestrian use to be subdivided for lack of supplemental income. The Realtors and developers must be salivating. This will also preclude many visiting families unable to make use of hotels, motels, and other lodging from having the opportunity to experience the city of Encinitas, or those familiar with our great equestrian trails to the east from enjoying their use. It would not surprise me if this was viewed by the Coastal Commission as an excessive restriction of access to housing in the coastal

zone of Encinitas, or as an unlawful "taking" from every property owner in greater Encinitas, by the courts. This policy is a direct contradiction of the direction of the LCP as stated at I-13, b.,c.

Additional Related Impacts

The elimination of new short term rentals and the treatment of such rentals as transient housing within greater Encinitas may cripple or eliminate the ability of some ranch, farm, and horticultural operations to capitalize on agricultural and nature tourism, two of the fastest growing segments of the tourism industry. Agriculture and tourism each rank in the top five industries in San Diego county. With many farm and ranch operations struggling to survive in an increasingly difficult environment, the restriction on short term rentals may make the difference to some Encinitas farm and ranch owners. Offering one or two week stays on the surviving working farms and ranches may be another hidden asset that flower growers in the coastal zone or horse ranches in Olivenhain area will no longer be able to tap into. With the potential closing of Hollywood Park and an expansion of Del Mar race dates, as well as the growing jumper and polo equestrian base in the area, short term rental of various large horse properties in Olivenhain or summer riding/training camps might have become a new income stream for many property owners. The elimination of short term rentals may nip development of this potential asset in the bud.

As Goal 1 of the Land Use Element states, the City of Encinitas is a "unique seaside community providing a balance of housing...compatible with the predominant residential character of the community." Although short term vacation rentals may function as a residential zone auxiliary land use, such uses in our City have been an accepted part of this community, for decades prior to incorporation. The short term rentals have helped our city provide maximum access and recreational opportunities without sacrificing sound resource conservation principles, and have still maintained the constitutionally protected property rights of private property owners. Such uses have caused occasional conflicts in established residential neighborhoods, but they are primarily noise, parking, traffic congestion, late night disturbances, excessive trash and other similar problems normally associated with all residential areas of greater Encinitas.

The residential zones west of I-5 have been changing for many decades, and large families on the coast have been declining as the availability of larger more affordable family housing has been developed within the in-fill flower fields and open land to the east. A prime indicator of this trend was the closing of Pacific View elementary school due to a lack of enrollment age children in the immediate coastal zone area.

We often forget that when this city incorporated, we were not a typical bedroom community: we were the "Flower Capital of the World," and perhaps one of the strongest and most vibrant "cottage industry" cities in the United States. An unfavorable zoning code and matrix decimated the Flower Capital part of our unique seaside community, and the current trends may soon morph the eclectic nature of our five communities into a homogenous bedroom community where the "E" on the windows will no longer celebrate Encinitas' diversity, but would better stand for "Elitist".

Tenant Rights

One individual mentioned that although the nuisances associated with rental units were individually minor, it was the combination that bothered him. Outside in the quad after the last council meeting, he asked if I knew what it was like to have a family move in next to you with a dog and children who would occasionally be out on the streets on a bicycle or skateboard, or a

family that decided to have a barbeque and used too much charcoal lighter. I told him that it sounded like any normal 21st century residential community. This comment made him upset, and he then told me that he was 85 years old, that he had paid his dues, and what did I know. I explained to him that I had been a member of this community for thirty years, had pushed the agricultural rock up the increasingly steep hill year after year, not to mention having served three tours to Vietnam, and that his paid dues were no more difficult or important than mine. But I digress...

It is the combination of zoning change and regulations that I find so onus and unreasonable. By forcing those that require rental income to balance their yearly budget by renting their property for over thirty days, we are lessening the safe-guards short term rentals provide the home-owner. California law guarantees additional rights to tenants as compared to guests, and thirty days is the demarcation when deciding which is which. When dealing with a guest, the home-owner has the stronger hand should the renter commit acts that violate the residential character of a neighborhood and the owner wants that renter out. After thirty days, the renter is not a guest but a tenant, and as such has certain rights under California law that gives the renter the stronger hand. The legal environment makes it difficult and time consuming when dealing with evictions. There are actually paralegal clinics that search the court records daily and inform the tenant that, for a fee, eviction can be delayed. Another example of the swing in favor of the tenant is the "Arrieta Case," which requires naming all adult habitants on the writ, whether or not their names were on the rental agreement. An Arrieta claim can result in another three to six week delay while unnamed inhabitants are enjoined in the suit.

So by restricting rentals to over thirty days if the 180 day limit does not work for an Encinitas landowner, the City is creating a situation where it is possible for a home-owner to return from their vacation to find a "squatter" who refuses to leave, and the home-owner is now out on the streets.

I find it difficult to believe that this is what the City had in mind when it decided on a 30 day minimum. Because the City 'forced' the home-owner into this position in order to meet the financial obligations of continued Encinitas residency the other 10 months of the year, a reasonable person might find the City culpable for this situation.

Well, that's enough for today. I hope that today's letter has exposed continuing flaws in the current drive to end short term vacation rentals. But maybe not. Maybe Cristy Guerin is right on and has considered all the nuances and ramifications of the present ordinances.

Until the next letter,

As always,

~..

GILBERT FOERSTER P.O. BOX 333 CARDIFF-BY-THE-SEA, CA. 92007-0333 CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

DATE: May 07, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon

RE: Ordinance No. 2005-06, 2005-09

Housing Element/State Housing Requirements/Coastal Zone Housing Requirements Comparative Benefit Analysis of Ordinance 97-17 and Ordinance 2005-6, 2005-9

NOTE: Everybody take a deep breath. Here we go into the deep end.

Encinitas Housing Element

There are a number of "Housing Element Components" required by the State of California and other guidelines and requirements established under Cal Gov Cd. Section 65590-65990.1. I am not going to site them all. I am sure that council members and staff are familiar with most of the elements I will refer to in this letter.

The City of Encinitas, in assessing housing needs, has reviewed the constraints on the maintenance and improvements of the existing dwellings for all income levels. [H-5, A-6.] The city's Implementation Program has identified, when appropriate and possible, areas for removal of constraints to the maintenance and preservation . . . of affordable housing in Encinitas. [C-3]

One of three issues addressed in the Housing Element sought to "ensure that the existing housing stock is maintained and preserved." [H-8] In a housing condition survey conducted in 1987, pockets of houses in Leucadia and Old Encinitas were identified as areas that could benefit from maintenance and rehabilitation. As part of our Housing Element, methods were sought to assist lower to moderate income property owners and owners of affordable rental units. [H-16] Every effort was to be made to encourage the conservation, preservation, and continued availability of existing affordable market-based units as required by state and coastal housing regulations.

The city's ability to exclusively provide programs for continued affordability and maintenance of existing housing stock was at that time, and continues to be, severely restricted by funding limitations. In an effort to maintain and enhance the city's stock of affordable housing, it is the city's policy to encourage self-help housing programs and to pursue every available means to encourage continued affordability of existing units for all income levels. The city has acknowledged that actual or potential constraints must not affect the maintenance of existing units for all income levels.

So how has our city done in its responsibility under the Housing Element and Gov.CodeSec. 65590-65590.1 to provide assistance and guarantee the maintenance and preservation of existing affordable housing? Not very well. Ever.

Now, let's travel back in time to the planning commission of 1997 and see if we can make some sense of why we removed residences and duplexes from the Transient Housing definition:

We have always been required to do everything we can as a city to preserve and maintain existing affordable housing. It's the law. However, we have, as a city, done a very poor job of providing

any realistic funding programs for the maintenance and preservation of affordable housing in the coastal zone.

During the planning commission discussions and public input, many homeowners in Cardiff, Leucadia, and Old Encinitas responded that, "the ability to rent their homes for short term summer vacation and race track rentals made the difference in their ability to maintain and remain in their homes." The extra income made their housing affordable and maintainable. This practice goes back decades. These have not been daily or weekend rentals, but for one, two, or three weeks at a time. In addition, these same homeowners resisted the notion of maintaining or preparing the necessary paperwork for "Transient Habitation" classification. Some were barely able to balance a checkbook; some only rented some years and not during other years; almost all of them put most of the money back into their homes, property taxes, home owner's insurance and the like. The planning commission understood that Encinitas' city coffers were not (and still are not) sufficient to provide City programs to preserve and maintain the required affordable housing required by law. The planning commission of 1997, in its wisdom, removed one of the existing and potential city constraints on the maintenance, improvement, and preservation of existing affordable housing. This was why residences and duplexes were removed from the Transient Housing definition.

Normally, I'd say I rest my case right here, but there's more:

Q: Why haven't the realtors or developers complained about the elimination of the right to rent?

A. Because there is more money to be made from the elimination of the existing affordable housing in the coastal zone and the rebuilding of monstrous edifices in their place. As a realtor, would you rather try to sell an eclectic cottage for \$600,000.00, or a new monster for \$1.8 million? As a builder, would you rather put in a new tile bathroom, kitchen counter-top, or roof, or demolish and rebuild a \$1.8 million monster?

Q: Why would the city entertain a set of ordinances that may force hundreds of home-owners to sell their cool funky little homes in Cardiff and Old Encinitas?

A. Because the monsters built in their place will provide much more in property taxes than the cool funky little homes. How do we know monsters will be built in their place? Take a drive down Neptune or through the narrow streets of the Cardiff hills and see what's been built in the last seven years.

Q: Again, why would the city entertain a set of ordinances that may force hundreds of homeowners to sell their cool funky little homes in Leucadia?

A: Because with all the talk of redevelopment and the windfall of redevelopment revenue, it will be cheaper to condemn some of the cool funky little homes, if necessary, if fair market value does not include income or potential income from short term vacation rentals. And because whatever is built in their place will provide much more in property taxes than the cool funky little homes

These ordinances will be the death knell for an undetermined number of homeowners, and will drive another nail in the coffin of what gives our our coastal communities character and makes them unique.

That's enough for this letter. Please digest it carefully. The life of our community depends on it.

Sincerely, Gil

GILBERT FOERSTER P.O. Box 333 CARDIFF-BY-THE-SEA, CA. 92007-0333 CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

DATE: May 09, 2005

City Council/City Attorney/City Staff/Gary Cannon TO:

Ordinance No. 2005-06, 2005-09 RE:

Miscellaneous Items

Passive Income

Many of our short term vacation renters are retirees living on fixed incomes. Part of their income stream is from short term vacation rentals. The government requires very little in the way of paperwork for passive income, and the income stream is taxed at the current retiree's income bracket. It is often increasingly difficult for retirees to deal with paperwork as age progresses. Many are overwhelmed just trying to do the paperwork required to keep the doctors, hospitals and pharmacies satisfied. The additional bureaucratic hoops that they will be required to jump through to retain their short term rental rights, and the added risk associated with long term renters, is quite unreasonable.

Housing Coordinator(Program Administrator)

David Harris, the Housing Coordinator for the City of Encinitas, in a phone conversation on Monday, May 9, 2005, explained to me that the only city effort currently satisfying the Coastal Commission's requirements for maintaining and preserving the existing housing mix in the Coastal Zone is the requirement for developers to replace like for like. They are allowed to replace the low to moderate income units up to three miles inland, effectively out of the immediate coastal zone. Again, this points out the need to support the existing low to moderate income owners of homes and rental units in the coastal zone. This proposed zoning change will damage the ability of many owners to maintain and preserve their coastal zone property, and it will accelerate the elimination of the community character that the council says it wants to preserve.

800+ Mailing & Newspaper Notification

The City of Encinitas Agenda Report for the April 13, 2005, Council meeting, from the Planning and Building Department, and signed by the Director, states at page 11-5 Public Notice that, "Legal notice for the City Council public hearing has been provided within the paper, along with mailing to over 800 individuals / agencies."

This proposed amendment affects 24,000 housing units in the city and untold owned but undeveloped parcels.

The paper that was used to notice the hearings and open the review period has a circulation of approximately 32,000. According to the circulation department, the paper is distributed primarily west of I-5, with few locations along El Camino Real and to the east. The mailing to "over 800 individuals / agencies" was actually only 762, according to documents provided by the City. Of those 762, 248 were out of town or out of state, another 121 were churches, trusts, or LLCs that may not have had a designated spokesman or representative. Some of the remaining 393 were owners inside the 255 unit Sea Bluff complex. These numbers and distribution profile would seem to indicate that, considering the loss of property entitlements proposed by this amendment, adequate notification was not provided.

<u>City Council Ignores Recommendations from the Planning Commission. and from Public Input given to both the Council Subcommittee and the Planning Commissions:</u>

Time Line

Options/Recommendations

Decision.

Council Goal Setting

Jan. 2004

Investigate ways to mitigate impacts of (transient) rental of single family

homes.

Council workshop

May 2004

No decision

110 400

Referred to Subcommittee

July 2004

C. Guerin/D.Dalager

Hold Public Hearings

Subcommittee Public Hearings

October 2004 November 2004 5 Options formulated based on public/staff

input.

Council discusses options December 2004 Council proposes amendment to Zoning Code, LCP, prohibiting Citywide short term rentals in all residential zones. All existing short term rentals would become Non-conforming uses and subject to regulatory operations permit.

Council directs staff to prepare amendment, to change non-conforming ordinance, etc.

(4-1) Stocks dissenting

Notification to over 800 See 800+mailing above February 2005

Planning Commission Hearing March 2005

Recommends NO ACTION on Amendment. Recommends focus on regulatory process to control impacts from short term rentals. (4-1) Baggs dissenting Opposed to any change of existing uses.

City Council Meeting April 13,2005 Council ignores City Attorney, City staff, Public input, Planning Commission. Council adopts Zoning change, refuses non-conforming use modifications.

(4-1) Stocks dissenting

(Also see memo from Sandy Holder <SHOLDER@ci.encinitas.gov.us> dated July 29,2000. "Then I had my secretary listen to the tape of the actual Planning Commission meeting and transcribe the two page portion pertaining to the definition of Transient Housing Unit. It is now very clear that the Planning Commission's intent was to exempt all short term vacation rentals from paying the transient occupancy tax and to exclude them from the transient habitation unit definition. The minutes reflect that the commissioners supported race track rentals for less than 30 days and no one felt that the City should have any control over that. . . . it is very clear from reading the minutes that the Planning Commission did not want to prohibit single family homeowners and duplex homeowners from renting their units for

short term rentals of less than 30 days. If I can be of further assistance, please let me know." Sandy Holder, Community Development Director.)

Council appear to have decided to disregard the public's input and its own planning commissions. By disallowing any new rentals and with no modifications to the non-conforming uses ordinances, the changes will essentially rapidly eliminate almost all short term rentals of any existing residential property or any future constructed residential property in the City of Encinitas. Evidently, the council members, rather than stiffen and enforce regulatory controls over vacation rental impacts, are willing to sacrifice the constitutionally protected rights of property owners in the entire city. While today they sacrifice the right to rent your home, what about tomorrow? Maybe surfboards should be prohibited on homeowners' properties, or cars that haven't passed smog, or owners can only keep cats as domestic pets - no dogs, no hamsters, no rabbits. Or perhaps all homes should be pastel colored with the mailbox to the right of the door. A nice homogenous, drab, lifeless community. No thank you.

Petition author and originator

A member of the council commented that the petitions circulated before the April 13 meeting were all from one person. This is not correct. The original petition was indeed written by one person, but it was signed and returned by many. To anyone on the membership list of charitable organizations, as my wife and I are, this is not an uncommon way to solicit support for any number of causes. One person writes the petition and everyone is asked to sign and mail to the appropriate representative. (See attached)

Making Matters Worse

By not setting the MINIMUM for a short term vacation rental at one week or more, we are allowing the worse offenders of commercialization of vacation rentals in residential areas to continue weekend use, or even worse, daily rentals in residential areas. Under the proposed zoning change and ordinances, one day rentals would be allowed as long as they were started prior to certification of this ordinance. For example, Sea Bluff, which now has one week minimums, could see everyone rent their homes out for weekends or even daily in the next 90 days, and continue on forever as long as they had a one day renter every 180 days. Nice job, City Council.

Regulatory Controls

The few offending property owners who appear to treat their homes as hotels can easily be brought under control through regulatory means.

Limit short term rentals to a minimum of one week.

 Limit short term rental use to 93 days per year or owner is treated as a commercial provider of short term habitation and subject to more stringent controls and TOT.

 Inspect all short term rental properties used for over 93 days yearly for violations related to non-permitted additions and modifications.

• Establish stringent parking restrictions based not on bedrooms but legal off-street parking as determined by building department and fire marshall.

Establish and enforce quieting guidelines related to stereos, late night parties.

The council, planning commission and staff have the tools to control the offending properties without attacking the protected property rights of homeowners. If these means had been employed first and failed then additional restrictions might have made more sense.

Respectfully,

Gil

JUN-07-2005 05:38 AM

P.01

6/6/2005 Gary Cannon California Coastal Commission 7575 Metropolitan Ave #103 San Diego CA 92108-4402



CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

Dear Mr. Cannon

AGAINST ordinance 2005-06 2005-09 elimination of short-term rental homes in Encinitas

I bought a Condo in Sea Bluff 5 years ago, based on my ability to rent it out by the week. I have only recently started to rent it out this year and I may not rent it out weekly every year and I still want to maintain my property rights to rent it weekly.

Eliminating short-term rentals hurts all Californians by restricting the access to our local beaches and coastline making it impossible for FAMILY'S to afford to vacation by the beaches

I live in the community of sea bluff where 90% of the weekly rentals in Encinitas are I have no problem with weekly renters and my community is quiet and peaceful

Please do not vote to pass this awful poorly written law

Kent Plank

1734 Aldersgate Dr.

Leucadia CA 92024

680 P02 JUN 03 '05 13:02

DECEIVED
JUN 2 0 2005

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

June 3, 2005

To: Gary Cannon
California Coastal Commission
7575 Metropolitan Ave. # 103
San Diego, Ca. 92108-4402

RE: AGAINST Ordinance # 2005 -- 06, 2005-09 Elimination of Short Term Rental homes, by the City of Encinitas.

I am opposed to the proposed changes to the Encinitas Zoning Code which will eliminate my and other property owner's abilities to rent property on a short-term rental basis. This seems to be a violation of our rights. In addition, this limits the ability of others who are not fortunate enough to live on the coast, from enjoying the area when they are on vacation. The majority of visitors can not afford to take an entire month off thus forcing people to rent a place for a minimum of 30 days when they only have a 14 day vacation seems ridiculous. It is also something that is probably unenforceable. The City Council has no right to dictate to citizens the terms of their rental properties. Summer rentals and short-term vacation rental have been an accepted practice in our community since before it was an incorporated City.

It appear to me that the City Council could have investigated how other cities in the area have resolved the problem with late night disturbances. The City of Solana Beach came up with a plan that requires those property owners who want to rent their properties on a short-term basis to apply to the City for a permit. Once the City issues the permit, a card is provided to the property owner with the permit number printed on it. This card is to be posted in a window during the times when the dwelling is being rented out on a short term basis. Thus supplying a way for the city to monitor and eliminate those who are abusing the peace and quiet of others. If the tenant occupying the property starts to get out of hand, loud or rowdy, then anyone who is being bothered can call the City and file a complaint. The permit # (which must be posted) can be attached to the complaint. Complaints can then be investigated and if need be the permit can be revoked by the city for repeat violations. Repeat violators would then loose the right to rent their property out on a short-term basis. It seems that the City of Encinitas has been very short sided in their investigations of alternative ways to control the few visitors renting here that get out of hand. I have lived in and around short-term rental for years, and I have never found it to be a problem. Visitors should have the same rights to enjoy the coast as those who live here on a permanent basis. Not every short term renter stays up late partying and making noise. It is unfair to punish all short term tenants and property owners because a "few" tenants have been loud in the past.

This issue was originally taken before the City Council by a handful of residents who live in the Sea Bluff development. These same owners tried and were unsuccessful in getting

Encinitas LCPA 1-06 Page 148

680 P03 JUN 03 '05 13:02

their own homeowner's association to restrict short-term rentals, so they took their complaints to the City council. It seems ridiculous that the City of Encinitas would change the "rules" for everyone because a "few" Sea Bluff owners found short-term rental to be a problem. I think those citizens need to move to an area where there are no tourists. A little noise now and then is a small price to pay to live in paradise. The public should not be restricted from enjoying the coastal experience of Encinitas.

Please reject ZCL/LCPA Case# 04-248 as an excessive restriction and help us keep the Encinitas Coastal Zone open for everyone to enjoy. Tourism is a good thing!

Janet McCollough 2477 Montgomery Ave. Cardiff, Ca. 92007 June 13, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue #103 San Diego, Calif. 92108-4402

Dear Mr. Cannon,

I am taking the time to do something I ordinarily don't do and that is to speak out about the concern I have over a city ordinance that has recently been passed. Specifically, I'm referring to Ordinance #2005-06, 2005-09, Elimination of Short Term Rental homes by City of Encinitas. I have very strong feelings on this subject, and that's why I felt the need to write to you.

I am a native Californian - I grew up in Corona del Mar, but now live in Arizona. It's difficult to express just how much I miss home and the beach. I grew up a block and a half away from Big Corona State Beach and spent every waking minute of my childhood summers in the water. Now that we live in Arizona, it's become imperative that we come back home for a week each summer because to endure the Arizona heat without a getaway just isn't an option! But much more than that, it is so important to my husband and me to be able to take our appreciation for that precious gift of what we as kids enjoyed, and pass that along to our children. We had stayed in rental homes in the Newport Beach area over the past few years, but have been disappointed with the high prices, the traffic and just the overall type of home that is available. That's why I was so pleased to find a website this last winter, and on that website we found a wonderful oceanfront home in Encinitas. We are scheduled to arrive this Sunday and have been counting the days ever since we reserved it last February. I am deeply concerned about this ordinance and the effect it will have on our ability to "go back home" in future summers. If this ordinance is enforced, there will be fewer rentals available to families like ours and subsequently, the price of a week in a summer house could potentially become out of reach for us. I could understand if the reasoning behind this ordinance is to limit those renters who come to the beach with partying in mind and who might disrupt ordinarily quiet neighborhoods. But even as it is, the rent is not cheap and would be prohibitive for a bunch of college kids, so I don't think that concern is really valid. But do you really want to shut the door on families who wait all year to come back to the beach where, each year, precious, lasting memories are made? Because that is what this ordinance would do. Whatever the concerns are that prompted the creation of this ordinance, can you honestly say they are more important than that?

I understand that there are hearings coming up in July and I just hope that you will read this letter and take my plea into consideration. I'm sure that for every person like me who writes to you, there are many more who feel just as strongly but don't. Please reconsider the direction in which this ordinance will take the City of Encinitas, and respond with compassion for its residents who are also in opposition as well as those who have come to call Encinitas their "home away from home".

Sincerely,

Janice L. Snyder

1009 W. Peninsula Drive Gilbert, Az. 85233

(480)813-1306

Dear Gary Cannon,

I have lived in Leucadia SeaBluffe for the last three years. My husband and I bought here because it is where we want to retire and because we wanted to live in the San Dieguito School District. Last summer, we rented our home on a weekly basis while we were in the process of putting our home in La Costa up for sale. In the process of renting, we meet wonderful people. A family from New Zealand came while their daughter was getting married. Another couple and their grown sons came and stayed for a couple of weeks. They live in San Diego but wanted a place at the beach to get away from home so their family could be together. They knew that if they were home that there would be things to do around the house and that they would be caught up in the everyday things that come. Another wonderful family with 3 boys came from Utah. We talked about changing residence for a few weeks a year, they could come to the beach and we could go skiing. Every one of the renters took great care with our home and we meet new friends. We also offered to have our family from Texas come to our home and stay while we are on vacation this summer.

The unit next to us is a short term rental. All of our experience with those renters has been wonderful as well. One couple which we came to know comes here every summer. My daughter dog sits when they need to leave for a day or two. It is also nice because most of the year, this rental is vacant as many of the rentals in Sea Bluffe are. This makes most of the year, very quiet and when summer comes, it is great to see family and friends get together and enjoy the beach and weather. A few summers ago, there was a family reunion and they all stayed in Sea Bluffe. Each family took turns preparing breakfast and lunch in the club house. I loved this idea and plan for a similar family reunion next summer. If this ordinance is passed it would eliminate these kinds of gatherings. It would also eliminate the diversity of people that we come to know as part of these short term rentals. Short term renters also become future buyers in our community and future contributors to our community. Many people that live here in Sea Bluffe came here originally as renters.

I am fully aware the when a minority of the Sea Bluffe residences couldn't change the CCC's to their satisfaction which would eliminate the short term rentals, they took this issue to the City of Encinitas. When I first came to Sea Bluffe, I was approached by this group to run for a position on the Board. I received many calls from this group telling me that if I supported their position, that they would get their supporters to vote for me. My response to them was that if I was elected I would do what I thought was best for Sea Bluffe and refused to support any group just to secure votes. This group also sees Sea Bluffe as a retirement community and has little tolerance for children. Being a teacher, I love having kids around to brighten up the day and not as a nuisance as they do. This mentality has to STOP.

I sincerely hope that you will reconsider this opposition to short term rentals. I love my community just the way that it is. One of the reasons that I bought in SeaBluffe was so that I could go on vacation over the summer and have a family come to enjoy my home and community. The beach is a place for families to come to and enjoy but many don't have a full month of vacation from work. I would miss the diversity and uniqueness of Leucadia/Encinitas. It is a wonderful place to live and I feel very lucky for that opportunity.

Sincerely.

Kathy Poery Leucadia Sea Bluffe Owner, 1760 Kennington Rd., 760-436-2441

Educational Technology Coordinator, Cardiff School District

May 24 05 01:30p

Jacqueline Grad..

323-665-9746

p.3

TO THE ENCINITAS CITY COUNCIL, MAYOR AND CITY ATTORNEY:

I am a homeowner in Encinitas and I am currently using my home as a furnished weekly rental. I own a large property and use the entire property as a furnished short-term rental and sometimes as a long-term rental as my needs dictate, as well as a part-time vacation residence for my family. We plan to use the home eventually as our retirement residence. I have the support of my neighbors and business owners who I deal with, and have not caused any disturbance by my completely legal activities on a completely fenced and private property with off-street parking, several blocks from the beach. I find any intrusion into my property rights and practices to be illegal on the part of the City or any government body that would attempt to regulate how and to whom I rent my property.

Any zoning changes which intrude on my right to control my home and how I pay my mortgage and taxes would harm me and my family directly. I don't want to be required to rent a certain number of days per year as a vacation rental, as long as I am meeting all of my obligations as a homeowner, neighbor and taxpayer. By the way, I searched for any text as to the details of this proposed ordinance on the City website and could find nothing - I suspect it is being kept very secret for the reason, that it is completely illegal.

I do not know of any other municipality where it is illegal to rent out your home on a short-term basis. For example, my friend just rented a home for the weekend in Ventura, so she could celebrate her birthday on the beach there. Any restrictions on this practice are completely intrusive and if adopted everywhere, no one would be able to rent a house anywhere. How about Big Bear? How about the Riviera or the Amalfi Coast? How about Carmel? Any location which attracts vacationers is a potential target for such strong-handed municipal interference. There are plenty of laws in place which control noise, parking, and other nuisances. Our home and our neighborhood reputation are very valuable and we have many nice furnishings, landscaping etc. which we expect our renters to treat well, and they are pre-screened with large security deposits.

Our decision to buy a rental property which will eventually be our retirement home, was inspired by a former employer, a highly respected attorney in Seattle, Washington, for whom I worked as a paralegal for over eight years. He and his wife bought a home in Carmel, CA, which they elegantly furnished and rented short-term for many years through a property manager, while they only took two or three weeks per year to enjoy their property. After many years, they are now able to spend four or five months there a year, as they always dreamed, and they no longer have to rent the place out to others, as they own it free and clear. This is how I imagine my future retirement, in what I had come to believe was a perfect place for me, Encinitas.

I can't imagine my former boss, who was also President of the Seattle Bar Association during my tenure, would now be looked at as a law-breaker and be subject to City scrutiny for his rental practices. I also can't imagine that any City meddling into homeowners' property rights will ever be held up in court, and I am sure any attempts will be met with the strongest resistance by myself and all other concerned citizens of Encinitas. Please take this to heart and cancel this attack on my property rights and threat to my future financial stability.

homeowner

cc: to CA Coastal Commission 5-24-05. Original e.maileds-5-05 to the City Council, Mayor & City Attorney from expro@sbcglobal.net Jacquelne Grad



David P. Fischbach PO Box 1454

COASTAL COMMISSION BAN DIEGO COAST DISTRICT

Rancho Santa Fe, Ca 92067

858-759-0304

Fax:858-759-0306

May 25, 2005

Gary Cannon California Coastal Commission 7575 Metropolitan San Diego, CA 92108-4402

RE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes, by City of Encinitas.

Dear Mr. Cannon,

This letter is written to express my strong objection to the current ordinance to eliminate short-term rentals in Encinitas. This proposed ordinance seems to be in direct conflict to the mandate of your commission, which is to preserve the California coastline for all people to enjoy.

The elimination of short-term rentals would restrict the public access to the beach in a direct and very destructive way. There has been a small, but vocal group in Encinitas that has pushed this ordinance forward so that they can swindle the coast away from the public and keep it for their own personal use.

I have rented out my bluff side home in Encinitas for more than 10 years and have had the pleasure of sharing the Pacific Coastline and the beautiful beaches with hundreds of families and their children. Many of these families return year after year, eagerly anticipating their time near the ocean. Without my rental or that of other bluff owners, these families would not have been able to stay and vacation at the ocean. These visitors are NOT transients, as some would have you believe, but hard working, tax paying citizens, who desire to spend their family vacation along the California Coastline.

In conclusion, I oppose Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes in the City of Encinitas.

Sincerely,

David P. Fischbach Owner 952 Neptune Ave,

O P. Fruchbach

Encinitas, Ca 92024

Page 1 of 1

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P.02/02

RECEIVED

JUN - 1 2005

Gary Cannon
California Coastal Commission
7575 Metropolitan Avenue, #103
San Diego, CA 92108-4402

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

May 25, 2005

RE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes, by City of Encinitas.

Dear Gary,

I'm writing to you as a homeowner in Encinitas who has been doing a combination of short-term and long-term renting of my home for the last two years. I'm very concerned that the passing of this Ordinance will limit my property rights as well as those of other homeowners who rent their houses or plan to in the future.

One of the proposed regulations that I find the most disturbing is the 180 days issue. I feel this is a real violation of our property rights when a homeowner loses short-term rental privileges if more than 180 days have passed since they last had a renter. This would eliminate occupying our homes in the winter and doing short-term rentals in the summer. Many others and I have rented this way and it would effectively be eliminated. I'm also worried about other severe restrictions that might be put into place if this Ordinance is approved. Not having the flexibility to rent short-term after 180 days would also make it increasingly difficult for myself and others to afford to live in the coastal

The passing of Ordinance #2005-06, and 2005-09 would make it increasingly difficult for tourists to take vacations here. If the Ordinance passes short-term rentals would be difficult to find and most families cannot afford to rent for 30 days at a time nor can most take a 30-day vacation. Staying in a hotel would be much more expensive when you add the increase in food costs due to the lack of a kitchen in a hotel/motel.

I believe that the Coastal Commission exists to preserve, maintain, and enhance access to and enjoyment of our coastal environment. If this Ordinance passes it will negate all of these issues.

On a personnel note, due to a chronic health condition I depend on summer rentals to help make up some lost income since it's difficult for me to hold down a full-time job.

Thanks you for your time and consideration,

Jill Denver

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Ave. #103 San Diego, CA 92108



Dear Mr. Cannon,

I am a home owner at The Seabluff community in Encinitas. I bought there because I felt that this property did not tower over the coast and that the association had the right idea of protecting the cliffs. That said, I am extremely upset with a small group of my neighbors who have convinced the City of Encinitas that they should enact an ordinance limiting my rights as an owner. This is a bad precedent to set.

This small group lost a similar battle in our association because it was proven that short term renting has no more adverse affect on the property than long term renting. What short term renting does provide is more people getting the opportunity to enjoy and appreciate our greatest resource.

This issue will take up a lot of time and money and then get over turned in the courts. If your group would look at the motivation of these few people, you would see that it has nothing to do with protecting the coastal environment and has everything to do with their own selfish desires.

Sincerely yours,

Larry Riis

1754 Whitehall Rd

Encinitas, CA 92024

JOHN M. DWYER ANITA DWYER 1756 Whitehall Road Encinitas, Ca. 91505 760 436-5446

JUN - 1 2005

CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

May 20, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego, Ca 92108-4402

Re: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes, by the City of Encinitas

Dear Mr. Gannon:

We are writing to express our opposition/the above ordinance. A tiny but very vocal and well-organized minority of Encinitas residents have convinced the City Council to pass an ordinance prohibiting any new sort-term vacation rentals and setting up such onerous restrictions and regulations on those of us who have rented in the past that even with the 'grandfather clause', many of us might not be able to qualify and therefore could be unable to rent our property in the future.

We are a retired couple, fortunate to live in our beautiful community near the ocean. When we purchased our home in 1997, we counted on being able to rent it from time to time to help us with our retirement income. And indeed, we have rented it out at sometime during the year every year since we purchased it - sometimes for just a few weeks, sometimes for the entire summer. This additional income allows us to keep our home in good condition, as well as permitting us to travel during the time we are renting.

The people that rent from us want to experience 'living at the beach' for a week, or two weeks. The cost of multiple hotel rooms, added to the additional expense of eating out three meals daily is beyond many, many families. And If they have children, and they usually do, the ability to rent our home and others like ours, where they can fix meals, often makes the difference in whether they will be able to experience beach living or not. These people aren't 'transients'. They are short-term residents who treat our home with respect and who are able to enjoy all of the pleasures of the coast while they are on vacation.

The tiny vocal minority which has bulldozed this ordinance through the Encinitas City Council seems to epitomize the phrase, Not In My Backyard. Their grossly exaggerated complaints concerning excessive noise, trash, etc. are simply a smokescreen. The truth of the matter is -- they have their little piece of paradise and are loathe to share it with anyone else. My wife and I strongly feel the beach, and the ability to experience all of the joys of coastal living for whatever short vacation period one has, should be available for everyone and not for the privileged few.

John M. Dwyer M. Anita Dwyer

May 23rd, 2005

Gary Cannon California Coastal Commission 7575 Metropolitan Avenue #103 San Diego, California 92108-4402 JUN - 1 2005

CALIFORNIA

COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Against Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes, by City of Encinitas.

Dear Mr. Cannon:

We have been owners of a property in Sea Bluffs since 1978, located at 1709 Aldersgate Road. As you know Sea Bluffs is a unique property separated from Highway 101 by a guarded gate, and has always been regulated by its 255 condo owners and not the City of Encinitas.

We have enjoyed living in Sea Bluffs, renting out our property, and having a place for family to gather. Our renters have always enjoyed the beach and the lovely community. Many came back in the summer year after year and some bought property in sea Bluffs.

As this rental controversy has been going on several years now, a few years ago the issue was put to the Sea Bluff community for a vote and they voted to keep the short term rentals. As many of us are retired, elimination of short term rentals would make it difficult for some of us to keep our coastal homes.

We hope you will consider letting the owners in Sea Bluffs decide their own future.

Thank You,

Norm and Mary D Knowlton 35109 Highway 79 #164

Warner Springs, Calif 92086

May 29, 2005

BECEIVE

Gary Cannon California Coastal Commission 7575 Metropolitan Ave. #103 San Diego, CA 92108-4402

CALIFORNIA
COASTAL COMMISSIONS
SAN DIEGO COAST DISTRICT

RE: AGAINST Ordinance #2005-06,2005-09 Elimination of Short Term Rental homes by City of Encinitas.

Dear Mr. Cannon and members of the California Coastal Commission,

I am writing this letter to express my opposition to the City of Encinitas' plan to ban all short term rentals. My wife and have been Encinitas residents for 13 years and were lucky enough to be able to purchase an oceanfront home 6 years ago. Not having a high income, we soon discovered we could rent our home out for 4 weeks every summer to generate extra income. This has greatly helped our ability to take nice family vacations and given us some degree of financial security.

Under the city's new proposal, we will no longer be able to rent our own home like this. The city appears to be unfairly targeting people like ourselves by including a 180 day provision in their new law. They have set it up so people who don't rent at least every 180 days will not be grandfathered in to allow current licensing. Taking away our freedom to supplement our income in this way seems to me to be a direct violation of our property rights.

We are very respectful of our neighbors and have a great relationship with them. We certainly understand the need for some regulation of short term rentals but we feel strongly that the city is going overboard in attempting to ban all vacation rentals. Summers are a very busy time in beach cities as people from all over San Diego county make their way to our beaches. We feel strongly that vacation rental tenants are taking too much blame for issues of noise and crowding that comes with summer. These vacationers bring revenue to our city in many ways. With the newly proposed transcient occupancy tax, more revenue will be generated to help our city financially. It seems too extreme to go from no regulation to over-regulation and an all out attempt to ban the short term rentals.

We are confident the coastal commission will force the city of Encinitas to come up with a better plan of regulating short term rentals. Thank you for considering this issue.

W. Sean Bohan 872 Neptune Ave. Encinitas, CA 92024 760-717-1127 May 24 05 01:30p

Jacqueline Grad..

323-665-9746

p. 1

RECTION 1 9005

Jacqueline Grad 227 Cereus St. Encinitas, CA 92024

May 24, 2005

Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402 EAUFGRNIA COASTAL COMMISSION SAN DIEGO GOAST HISTORICI

RE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes, by City Of Encinitas.

Dear Coastal Commission Members:

I am a property owner in Encinitas and am vehemently opposed to the Encinitas City Council's Ordinance 2005-06 and 2005-09, banning short-term rentals and placing massive restrictions on existing short-term rental owners. I believe this is an unlawful action which takes away my property rights and which will cause great harm to the Coastal communities of Encinitas, Cardiff-by-the-Sea, and Leucadia.

The City Council did not inform the property owners of Encinitas of their intent – there are over 22,000 property owners but the City only notified about 800 of the planned action. Our own Planning Commission recommended to NOT adopt this measure, and the City Attorney advised against the action. All citizens I have talked to, including property owners and business owners, knew nothing about the planned action before I told them about it, even though the City states they have been planning this for 15 months. EVERY citizen I have spoken to is opposed to banning short-term rentals. Councilman Jerome Stocks voted against this ordinance.

Last fall when we purchased our property in Old Leucadia, the City Zoning Department counter representatives specifically told us that we could rent our property any way we see fit, either short-term or long-term, and did not inform us of any pending action to take away our rights. I am one of the "lucky" ones that have records to prove I am renting my property short-term, but what about all the other people affected by this ordinance, that don't even know about it? As a long-time homeowner and rental property owner, It is unbelievable to me that four individuals can take away the property rights of 22,000 home owners without notice or ballot action, AND without notifying real estate brokers, or their own Zoning Department, of the need to alert potential home buyers of this pending action during the past year and a half.

We planned to eventually live in Encinitas in the winter (6-7 months a year) and rent the property short-term furnished in the summer. As the proposed ordinance stands, it will be impossible for us to live in our own house for more than 180 days, unless we move out and RENT IT OUT SHORT TERM EVERY 180 DAYS. If we don't do that, we will lose our right to rent short-term, FOREVER. This is incredibly restrictive.

A ban on short-term rentals would only allow the super-affluent to buy property in our beach neighborhood, which is now full of middle-class people and nice "funky" small houses. In fact our property, which is a 1949 historical craftsman hacienda on over 11,000 square feet of mature grounds, was re-assessed by the City after we bought it, with the land now being worth almost the entire purchase price, thereby effectively making our home, which is full of character

May 24 05 01:30p

Jacqueline Grad..

323-665-9746

p.2

May 24, 2005 California Coastal Commission Page Two

and charm, into a "tear-down". Our neighbors all think we did a wonderful thing to restore our property and the seller was interested in having us buy the property because we were NOT going to tear it down. In the future if we sell our property and it can't be used as a short-term rental (it's currently two units and a guest suite) – the next buyer will probably tear it down and build a huge monstrosity. Another concern, is that we had planned to build an addition of a family room with a second-story master suite above in about five years, turning the entire hacienda into a single-family home by connecting the back units to the front house. If Ordinance 2005-06 is adopted, we would lose our right to ever rent short-term again, if we make any addition to the house which adds a bedroom. This is also incredibly restrictive and ruins our long-term plans for the property, which plans (by the way) are consistent with the current zoning codes in R-1 zoned areas, so this aspect of Ordinance 2005-06 contradicts the City's own zoning code.

I am opposed to adding any kind of "conditional use" permit to my property, which is several blocks from the beach, completely fenced with off-street parking, and we are not impacting anyone by the use of our property. There has to be a better way for the City to deal with the impact caused to neighbors by the overabundance of vacation renters along Neptune and in Sea Bluff, which in my view is the only valid complaint to be addressed by the City. It seems ludicrous that because of the complaints of a minute number of beachfront homeowners in North Leucadia, the City Council can take away the property rights of over 22,000 homeowners over a vast area of land. Those who violate the rights of their neighbors should have sanctions imposed against them that are either already in place or which could be implemented. Ordinance 2005-06 and 2005-09 is a drastic measure that will certainly result in protracted lawsuits if it is upheld by the Coastal Commission.

Middle class families like mine will lose access to the coast in my neighborhood, renters homeowners alike, if people can't rent out their properties short-term to pay their mortgages. Not only will vacationing families lose their enjoyment of the area for one or two weeks a year, but folks like me who depend on short-term rentals to keep and maintain their property, will be forced to sell. One of the main reasons I bought in Leucadia, is that I loved the way of life here. It seemed to be the last little bit of "old" surf California beach towns, and I loved the way the City had kept the single-family and small-multi-family housing along the coast and kept out the big chain stores in Downtown Encinitas, instead of allowing massive hotel and condo development, like most of the other coastal cities. Now if they ban short-term rentals it will leave many people with no choice but to sell to developers. The ban will have the opposite effect of its surface intent: instead of keeping the "residential" feel of the area, <u>AS IT IS NOW</u>, it is obvious to me that it will pave the way for massive development instead.

Please also see enclosed my letter to the City Council, which was ignored by four out of five members. I am appealing to the Coastal Commission, in hopes that you will see the insanity of this zoning law, and ban the City Council from implementing it. Thank you for your time and attention to this vital matter.

86/14/2085 86:21

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KATHY

PAGE 82

Dear Gary Cannon,

I have lived in Leucadia SeaBluffe for the last three years. My husband and I bought here because it is where we want to retire and because we wanted to live in the San Dieguito School District. Last summer, we rented our home on a weekly basis while we were in the process of putting our home in La Costa up for sale. In the process of renting, we meet wonderful people. A family from New Zealand came while their daughter was getting married. Another couple and their grown sons came and stayed for a couple of weeks. They live in San Diego but wanted a place at the beach to get away from home so their family could be together. They knew that if they were home that there would be things to do around the house and that they would be caught up in the everyday things that come. Another wonderful family with 3 boys came from Utah. We talked about changing residence for a few weeks a year, they could come to the beach and we could go skiing. Every one of the renters took great care with our home and we meet new friends. We also offered to have our family from Texas come to our home and stay while we are on vacation this summer.

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I sincerely hope that you will reconsider this opposition to short term rentals. I love my community just the way that it is. One of the reasons that I bought in SeaBluffe was so that I could go on vacation over the summer and have a family come to enjoy my home and community. The beach is a place for families to come to and enjoy but many don't have a full month of vacation from work. I would miss the diversity and uniqueness of Leucadia/Encinitas. It is a wonderful place to live and I feel very lucky for that opportunity.

Sincerely.

athy Poery

Leucadia Sea Bluffe Owner, 1760 Kennington Rd., 760-436-2441 Educational Technology Coordinator, Cardiff School District

26 JAN 06 1203 NEPTUNE A MR GARY CANNON COMMISSION ENGINITHS CA-I PEGRET THAT I CANNOT THE POCUS OF THIS ORDINANCE IS NOT TO PREVENT PEOPLE FROM USING THE CALIFORNIA BRACHES, IT IS AN ATTEMPT TO LESSEN THE TRASH. RANCOUS PARTIES, TRAPPIC WHEN PROPLE CONGREGATE LITTLE OR NO INVESTMENT IN THEIR COMMUNITY, SPENT Y YRAPS OVERSRAS

THE MILITARY, I HIRED A PROPERTY MANAGER TO COLLECT THE RENT . DESPITE THIS ARRANGEMENT SHE HAD UERY LIMITED LEGAL RIGHTS TO INSPRET THE PROPERTY, INSTEAD OF THE 2 INDIVIDUACE ON THE RENTAL CONTRACT, THE POSTAL SERVICE IN PORMED ME THAT UP TO 7 ANDIVIDUACS WERE RECEIVING MAIL AT THIS ADDRESS, WHEN I RETURNED PROM OVERSEAS NEWGHBORS THANKED ME FOR STOPPING THE REATTAL STATUS - THE PLACE WAS TRASHED - AND I CRAPARD A VACUABUR LESSON/ 1- DO NOT RENT 2-18-YOUDO, PROPERTY MANAGERS CANNOT CONTROL DAMAGE & INAPPROPRIATE USES OF RENTAL PROPERTY 3-LET'S PACE-IT - DO YOU WANT TO LIVE IN A COMMUNITY WITH THE APOREMENTIONED PROBLEMS?
ROYALD KHOST January 20, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue #103 San Diego, CA 92108-4402

Dear Mr. Cannon

I have lived in my neighborhood for 30 years. I currently live at 553 Neptune Avenue, I have lived in this home for 16 years. I live across the street from the beach and three blocks from the closest beach access. Things have changed in my neighborhood since the 70's. The most obvious being the influx of people into our small beach community. Anyway, let me get to the point. I live in a great neighborhood and the reason it is a great neighborhood is because of the neighbors and knowing who they are and establishing a good relationship with them over the years. I believe in the "good neighbor" policy and respecting my neighbor's privacy and right to a quiet space. You will never be able to establish a working relationship with a neighbor who you will never get to know because they are just there for a short period of time. I feel renting a house at a minimum 30 days makes the most sense, as the Encinitas City Ordinance once stated in the past. Also, I am a big fan of supporting the local hotels and motels in the area just blocks away. There are several available. I have a personal experience with a short-term rental. My neighbor thought he would cash in on the short-term rental moneymaking bandwagon. He rented his house out for two weeks while he vacationed in Hawaii. I was aghast when I walked out onto the street next to a palm tree that separates our property and found 28 cigarette butts. Some were still burning! This, just in the first two days of their Encinitas vacation. I have nothing against smokers. I do have a problem with smokers that throw cigarette butts in the street and end up on our beautiful beaches. So, I quietly swept them up and hoped that was going to be the end of that. To my surprise I came out the next day and there were a dozen more! I was mad. I waited outside to confront this stranger. I asked him to stop throwing his cigarette butts in the street, that he was polluting and it was a danger to not only our property but to the small children and walking dogs because so many were still smoldering. I added that we like to keep our neighborhood clean. I did the math, at the rate the short-term renter was tossing cigarette butts there would have been 196 butts at the end of his two-week vacation. I always wondered and still do, at what he thought was going to happened to all those cigarette butts! He apologized and said that he too wouldn't want this "in his neighborhood"! I let that go and needless to say my neighbor doesn't rent his house out any longer. I am so grateful!

Thank you for listening and please no short-term rentals,

553 Naphre ave.

J. V.



CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

January 20, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

I am signing this letter as a supporter of ENCIT- Encinitas Citizens for Residential Stability, and I support LCP Amendment No. 2-05 (Vacation Rentals). This new ordinance prohibits short-term rentals of less then 30 days in all residential areas of Encinitas.

- After 15 months of fact-finding and deliberation the City Council decided that properties that have been or are currently being rented on a short-term basis will be allowed to continue such rentals provided they register with the City and follow regulations. Their right to rent would be "grandfathered", and these rights would be transferred with the land. In essence, there should be little or no diminution of visitor access. These "grandfathered" units and underutilized commercial rental properties near the beach will continue to supply the needs of rental families in Encinitas for the foreseeable future.
- The proliferation of short-term vacation rentals in residential areas of Encinitas through the use of internet advertising developed by professional management companies conflict with the residential character of our community. These conflicts include noise, parking, traffic congestion, late night disturbances, and excessive trash. The percentage of weekly rentals in one residential community alone now exceeds 20%! This frequent turnover of renters threatens to convert residential areas into commercial motel-like areas. For our own safety and peace of mind, we who live in residential areas need to know who our neighbors are.

The Council by this compromise has insured that the proliferation of short-term vacation rentals will stop and allow Encinitas's residents to continue to enjoy their rights to privacy and tranquility in a neighborhood environment. At the same time the Council through its "grandfathering" has assured continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this ordinance. Thank you. We have award were sured in

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Sincerely,

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Encinetas ,

January 24, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas LCP Amendment No. 2-05 (Vacation Rentals)

Dear Mr. Cannon:

I am signing this letter as a supporter of ENCIT- Encinitas Citizens for Residential Stability, and I support LCP Amendment No. 2-05 (Vacation Rentals). This new ordinance prohibits short-term rentals of less then 30 days in all residential areas of Encinitas.

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Sincerely. arthony G. Luboure
My address: 1824 Wilton Road

Encintar CA 92024



February 2, 2006

California Coastal Commission Attn: Mr. Gary Cannon 7575 Metropolitan Avenue #103 San Diego, CA 92108-4402

Re: Encinitas City Council LCP Amendment No. 2-05 (Vacation Rentals)

As a property owner in Leucadia we feel that legislation restricting rentals to 30 days or more, with the exception of the those reasons listed in the above Amendment, should be passed by the Coastal Commission,

The San Diego coastline is beautiful and should be available to all citizens. This is easily accomplished using the existing public beach areas already in place along the coast.

During the prime summer month rental season, it is nice to see the increased business in restaurants, stores and visitor areas. It brings needed income to the cities and businesses. However it also brings more traffic congestion to our streets, parking, public areas and beaches.

In our complex of about 270 units, the increase in trash by visitors overflows our trash bins (if the trash ever makes it to the bins), parking problems for both the visitors and residents (too many cars in too little space from multiple cars of visitors), beach trash litter, increased maintenance costs to our swimming pools, and late loud noise are some of the problems we face because of the short term renters in our quiet residential neighborhood.

The change from a nice pleasant residential complex that existed here is being challenged by the frequent turnover of the short term renter. It seems that each summer the clutter, noise, trash on the beach and general congestion increases more and more as additional short term rental units become available. This is not something that we look forward to.

Your consideration to pass this Amendment will help preserve the lovely coastal areas.

Thank you,

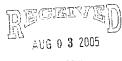
George and Linda Tyler 1807 Milbank Road

Leucadia, CA 92024-1029

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CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT July 29, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402





RE: Encinitas Regulation of Short-Term Vacation Rentals, Ordinances #2005-06, 2005-

Dear Mr. Cannon:

I support the Encinitas City Council's Ordinances #2005-06, 2005-09 Elimination of Short Term Rental Homes. This new ordinance prohibits future short-term rentals of less than 30 days in all residential areas of Encinitas.

I have always been able to find vacation facilities for my friends and relatives in the nearby hotels, motels, timeshares and campgrounds. This area of the coast has plenty of facilities for vacationing families to enjoy the coast. Many of these facilities are just a few blocks from the beach. More commercial facilities for short term vacations are being planned in the immediate area in the near future.

Senta

Linda Howey 1757 Whitehall Rd

Encinitas, CA 92024

ENCIT Encinitas Citizens for Residential Stability P.O. Box 231909 Encinitas, CA 92023-1909

June 28, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals

Dear Mr. Cannon

Ladies and Gentlemen of the Commission, ENCIT represents over 150 residents of Encinitas who support the City Council's enactment of Statutes #2006, and #2009 regulating short-term vacation rentals in our City.

We first call to your attention that the Encinitas City Council in drafting these statutes specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use'. Specifically, their rights to rent would be grandfathered, and which rights could be transferred with the land. In essence therefore, there would be little or no diminution of visitor access as a result of this action.

These ordinances are the result of over 15 months of fact-finding and deliberation, including several public Council meetings, two major forums before the Council's Subcommittee, and countless hours of personal meetings with each of the individual Council members by representatives of both sides of this issue.

Dozens of Encinitas citizens have on each occasion during these public sessions, voiced their opinions of how the Council should rule in this matter. All were witness as the Council considered conflicting points of view so that they might arrive at a vision of how a great City should proceed equally for all of its citizens.

Central to the divisiveness between the parties in this debate was the divergent interpretation of 'property rights'. We think it is fair to say that what finally emerged is that there are property rights on both sides of the fence. For after all, each piece of property joined together becomes what is called a neighborhood. And each of the neighborhoods together becomes a City.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitor-serving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor-serving commercial uses to "intrude into existing residential communities".

Some have suggested that most of the problems stated can be controlled by regulations and increased police enforcement. The key however is the word "proliferation". What unfolded before the Council during the past year and a half was convincing evidence that through the use of internet advertising, the lure of financial gain, and led by professional management groups, these problems have been propelling beyond control, and that there is no end in sight. In fact, the percentage of such rentals in one residential community alone is exceeding 20%! Further, that the motel-like environment resulting from such accelerating growth was creating an unfair imposition on the property rights of the permanent residents of the community.

At the same time the Council, in recognizing "legal nonconforming use", acted in complete fairness by conferring grandfathering rights to those property owners who will be able to demonstrate a proven record of substantial past rentals.

It should be noted in this regard that as a result of such 'grandfathering', present access to the beach will not change!

It is now clear that by these evenhanded actions, this Council is acting in good faith on behalf of all of its citizens. Some may not be aware of a number of decisions made by the California Appellate Court in deciding for the City of Carmel and their relevant statute in this regard.

In part the Court found that such indiscriminate short-term rentals are simply incompatible with the "essential character of a neighborhood and the stability of the community". Further, that the City had a legitimate governmental responsibility in maintaining the residential character of its neighborhoods.

Therefore the Council, because of its resoluteness has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use, has

assured continued access to the beach. We believe these actions constitute a fair resolution of the problem, and respectfully request your support of this statute.

Thank you.

For the Committee:

For ENCIT		
Harry Fund	-Seabluffe	760-436-8958
Irwin Rubenstein	-Seabluffe	760-942-9432
Theresa Vos	-Neptune	760-436-4940
Franz Birkner	-Neptune	760-942-5100

The attached internet addresses are but a sample of website advertising commercial rentals in Encinitas.

http://www.seabluff.com

http://www.beachfrontonly.com



July 25, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego, CA 92108-4402

Dear Mr. Cannon:

This letter is in regard to Encinitas City Council's Ordinances #2005-06, 2005-09 Elimination of Short Term Rental Homes.

I cannot tell you how much time, listening, and thought the Encinitas City Council has put into this issue of Short Term Rentals. The Council has shown consistent intelligence, patience, and understanding to both sides throughout this longtime debate. I have attended many of the Council meetings regarding this issue and I can tell you this has not been an easy situation for the City Council Members. They have been threatened, among other things, by lawsuits from those wanting to create a business atmosphere in our Encinitas residential neighborhoods with short-term rentals. This same group has subjected them to language that has been completely out-of-place and totally disrespectful.

We have an outstanding Encinitas City Council. I urge you to respect their knowledge and confer with the decisions that they have made.

Sincerely.

Janet M. L'Heureux-Barmettler

Property Owner 1809 Wilton Road Encinitas, CA 92024 DECEIVED Jane 13, 2005

Gury Cannon

California Coastal Commission

7575 Metropolitan ave. # 103

San Diego CA 97 108.4402

Dear Mr. Cannon

I am writing to net you to vote IN FAVOR of the Ordinances 2005-06 and 2005-09 passed and to be passed key the City of Encinitiae.

These Ordinands were passed to maintain the quality of life in our City. There will be a few who for moretary reasons will try to block these Ordinands.

Please listen to the City of Encionities, they are speaking for the majority.

Yourstruly.

John Hicks 1872 Parliament Rd Encinitas, CA 92024 Irwin Rubenstein 1838 Parliament Rd. Leucadia, CA 92024-1030 760-942-9432 RECEIVED

AUG 3 0 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO GOAST DISTRICT

August 29, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

I spoke to you last week about a problem I have with the dates of the 2005 October meeting (Wednesday October 12, Thursday October13 and Friday October 14) in San Diego of the California Coastal Commission. I understand from Pat Murphy, Encinitas Planning, that the above issue on short-term rentals might be on the agenda of that meeting.

I mentioned to you that Thursday October 13 is the Jewish religious high holiday of Yom Kipper and that I would be unable to attend the hearings on that date. Since Yom Kipper starts Wednesday evening, I would appreciate it if you would schedule the Commission's discussion of "Encinitas Regulation of Short Term Vacation Rentals" for either Wednesday or Friday morning.

I have been heavily involved with this issue for almost two years and hope that I could be permitted to appear before the Commission. Thank you for your consideration.

Sincerely,

Irwin Rubenstein



Irwin Rubenstein 1838 Parliament Rd. Leucadia, CA 92024-1030 760-942-9432



July 19, 2005

Mr. Gary Cannon California Coastal Commission 7575 Metropolitan Avenue, #103 San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

The Encinitas City Council recently enacted Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. You have or will shortly be receiving information on this ordinance from Mr. Pat Murphy, Director of Planning for the City of Encinitas.

This new ordinance prohibits future short-term rentals of less then 30 days in all residential areas of Encinitas. Properties that have been or currently are being rented on a short-term basis are allowed to continue such rentals provided they register with the City and follow the regulations governing the behavior of renters. This new ordinance was the result of 15 months of discussion and compromise; at least 5 public meetings of the Council and a Council sub-committee were held. This ordinance is a partial return to the *status quo* that existed in Encinitas in 1997.

A little history is in order. Prior to 1997, short-term residential ("transient") rentals was prohibited in all residential areas of Encinitas. While a few rentals of less then 30 days probably occurred illegally, most rentals in residential areas were for 30 days or longer.

At a meeting of the Encinitas Planning Commission in 1997, which had little public attention, the Commission proposed a change in the City's zoning ordinance that had the effect of allowing single family homes and duplexes in residential areas to rent their property for any period of time -- even as short as one day. Shortly thereafter, this recommendation of the Planning Council was adopted by the Encinitas Council -- again with little or no public discussion. Many of us only learned of these decision years later when inquires were made to the City.

Why is a new ordinance necessary at this time? Realtors and developers have begun to exploit, in an ever increasing fashion, the zoning changes made in 1997. They use the

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Internet to market worldwide the short-term rentals of Encinitas homes. One has only to look at the Internet to see how large these commercial operations have become and their potential for future growth. See www.seabluff.com. Many of us in Encinitas that live in residential areas have seen our neighbor's home sold and turned into motel-like operations. The new owner remodels the home to contain the maximum number of people possible and then rents the property to the maximum number of people possible for periods of a week or even as short as one day.

I first call to your attention that the Encinitas City Council in drafting this Statute specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use.' Specifically, their rights to rent would be grandfathered, and which rights would be transferred with the land. In essence, therefore, there would be little or no diminution of visitor access. These "grandfathered" units will continue to supply the needs of rental families for the foresceable future.

I next want to note that the City has ample areas designated for commercial use. Numerous motels and hotels are located in the zone extending along Highway 101 from the northern boarder of Encinitas to the old downtown area. These facilities for visitors are located a few short blocks from the beaches. And more are planned. KSL Development is to build and operate a 126-room hotel at the end of La Costa Avenue. The project on the Leucadia bluffs and directly on the beach was originally approved by the City of Encinitas and then the Coastal Commission approximately 7 years ago. In addition, the City of Carlsbad plans to develop about 50 acres just north of Batiquitos Lagoon which is on the northern border of Encinitas. This development will include a hotel, time-shares and other commercial usages. It is located directly across Highway 101 from South Carlsbad State Beach Park.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitorserving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitorserving commercial uses to "intrude into existing residential communities."

Once commercialization starts in a neighborhood and reaches the so called "tipping point", your property becomes unattractive to normal home owners. The only people who will buy your home are those that wish to use it as a rental property—thus "tipping" a residential area into commercial usage.

The Council has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use and its extensive commercially zoned areas has assured the public continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this statute. Thank you.

Sincerely.

Irwin Rubenstein